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**JOHNS HOPKINS UNIVERSITY STUDIES**  
**IN**  
**HISTORICAL AND POLITICAL SCIENCE**

**Under the Direction of the**  
**Departments of History, Political Economy, and**  
**Political Science**

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**VOLUME XXXI**

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**THE LAND SYSTEM IN MARYLAND**  
**1720-1765**



**SERIES XXXI**

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**THE LAND SYSTEM IN MARYLAND**  
**1720-1765**

**BY**

**CLARENCE P. GOULD, Ph.D.**

**Michael O. Fisher Professor of History in the University of Wooster**

*THE  
JOHNS HOPKINS  
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## PREFACE

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These four chapters form part of a larger work intended to cover the economic history of Maryland in the period designated. The research for the entire work is about finished, and several additional chapters are now complete; but it has seemed desirable to publish as a monograph the part relating to the Land System, and to present later the other factors in the colonial life of the eighteenth century.

The author is under obligations to Professors J. M. Vincent and Charles M. Andrews for aid and suggestion in the preparation of this work. He also wishes to acknowledge indebtedness to his mother for many of the arithmetical calculations.

C. P. G.



## THE LAND SYSTEM IN MARYLAND 1720-1765

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### CHAPTER I

#### THE GRANTING OF LAND

According to the terms of the charter of Maryland, Lord Baltimore was given the land "in free and common socage;" and was empowered to "assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient, to have and to hold . . . in Fee-simple, or Fee-tail, or for Term of Life, Lives, or Years; to hold of the aforesaid now Baron of Baltimore, his Heirs and Assigns, by . . . such . . . Services, Customs and Rents of this kind, as to the same now Baron of Baltimore, his Heirs and Assigns, shall seem fit and agreeable, and not immediately of Us."

With such large powers over land, and with the experience of the earlier colonies concerning the unprofitableness of trade, it is easily seen why the proprietor, to reap his profit, turned toward the exploitation of the soil. Following the plan which had worked so successfully in Virginia, Lord Baltimore provided in his early conditions of plantation for the granting of land to those who would transport settlers into the colony. By each grant there was reserved to the proprietor a perpetual quit-rent, which, though originally payable in wheat, was fixed in 1671 at four shillings sterling per hundred acres. In 1683 transportation of settlers ceased to be the basis for the granting of lands, which were thereafter obtainable only on the payment of a purchase price, called caution money, of two hundred pounds of tobacco per hundred acres. This was raised in 1684 to two hundred

and forty pounds, which rate was doubled during the royal period. In 1717 the purchase price was changed to money at the rate of one penny for each pound of tobacco, making forty shillings sterling per hundred acres.

These terms remained unchanged during the continuance of the commutation law,<sup>1</sup> but after its expiration in 1733 an increase in the land rates again became very tempting to the proprietor. By the instructions to Edmund Jennings, judge of the land office, in that year, the purchase price was left at forty shillings sterling per hundred acres, but the quit-rent was raised from four shillings to ten shillings.<sup>2</sup> Under these terms the number of land grants showed a sharp decrease, so that in 1738 the four shilling quit-rent was restored, but the purchase price was advanced from £2 to £5 sterling per hundred acres. At the same time the land officials were informed that these were but minimum rates, and that higher rates should be demanded wherever, in the judgment of the governor, the secretary, and the judge of the land office, the desirability of the land would admit of it.<sup>3</sup> In practice, however, increased rates were seldom, if ever, demanded. After 1738 there was no further change in the land rates until the Revolution.

The proprietor, however, was not entirely pleased with this settlement. Charles, Lord Baltimore, satisfied with his experiment with a ten shilling quit-rent, seems never to have contemplated raising the rates again; but Frederick, who succeeded Charles in 1751, began almost at once a long series of efforts to increase his revenue from lands. Knowing that the population was rapidly increasing, and seeing that the Penns were obtaining higher rates from their lands, it is not strange that Frederick should have concluded that his charges were too low. In 1753 he appears to have given

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<sup>1</sup> See p. 34 et seq.

<sup>2</sup> Land Office, Warrants, Liber EE, p. 306; John Kilty, *The Landholders' Assistant and Land-Office Guide*, p. 232.

<sup>3</sup> Lower House Journal, May 25, 1744; Land Office, Warrants, Liber LG No. A, p. 135. This instruction bears date "at London 15 Dec<sup>r</sup>. 1738," but the precise date on which it reached the colony and went into force cannot be determined.

instructions to grant no land at less than ten shillings sterling per hundred acres, and to require within a specified time the settlement of a certain number of people on each grant. Both Colonel Lloyd, who was then agent, and Governor Sharpe wrote strongly opposing the change, and pointing out that although the rates as then established were not so high as those of Pennsylvania, where agricultural conditions were different, they were, nevertheless, much higher than those of Virginia. Sharpe's advice was accepted, and the rate was allowed to remain as before.<sup>4</sup>

About three months later, Sharpe again wrote opposing an advance in the price asked for land, but this time the advance suggested was of a little different nature. The system of granting lands was such that irregular bodies of ungranted lands were left interspersed among the lands granted,<sup>5</sup> and the proprietor seems to have suggested that these lands in the more populous sections of the province should bring a higher rate than land on the frontiers. Sharpe objected to this advance because the interspersed parcels were always the less desirable land, and were in such small quantities as to be worthless to any but the owners of adjoining tracts.<sup>6</sup> Again the advice of the governor prevailed.

On the breaking out of the Old French and Indian War it became hopeless to think of any advance in land rates,<sup>7</sup> but scarcely was peace declared before Secretary Calvert<sup>8</sup> was sounding the temper of the leading men of the colony on the subject of an increase in the purchase price. His

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<sup>4</sup> Archives of Maryland, vol. vi, p. 37.

<sup>5</sup> See p. 15.

<sup>6</sup> Archives, vol. vi, p. 53.

<sup>7</sup> Ibid., vol. i, pp. 161, 294.

<sup>8</sup> Until the accession of Frederick the secretary of Maryland was an officer who kept the provincial records at Annapolis and controlled the county clerks. In that year—1751—the proprietor appointed as joint secretary his uncle, Cecilius Calvert, who lived in England, and who acted as private secretary and adviser. He was paid by contributions demanded from the higher officers of the colony. Being of a suspicious nature, he maintained correspondence with many persons in Maryland, apparently as a check on the governor. He died in 1765, and was succeeded by Hugh Hamersley.

letter to Daniel Dulany brought out a strong reply in which Dulany discussed the whole land situation, and blamed the low price of Maryland land as compared with that of Pennsylvania largely on the enormous fees which were collected by the land officials.<sup>9</sup> The opposition thus developed was sufficient to cause the proprietor again to give up the idea of an immediate advance. Thus, although very anxious to stiffen the terms on which his lands were granted, he was repeatedly induced to abandon the plan by the advice of his own officers, who lived in the colony and were acquainted with conditions there.

Persons who were willing to take up grants of back lands along the disputed borders obtained terms much more liberal than were granted to the patentees of land more desirably located. It is impossible to say just when this policy was inaugurated. In 1697 Governor Nicholson, writing to the Board of Trade, advised that the lands around the head of the bay be peopled as the first step toward the settlement of the boundary question.<sup>10</sup> A similar desire to take possession of the lands in dispute between Lord Baltimore and the Penns may have given rise to the policy of cheapening the back lands, for it is of this same disputed country that Philemon Lloyd was speaking when, in 1722, he wrote, "Now, th<sup>t</sup>. we are about Lycencing our People, to make Remote Settlements, we must likewise use the Proper Measures to protect them."<sup>11</sup> Though these words of Lloyd suggest that the policy of encouraging border settlements may have been springing up in 1722, there is nothing to prove that special rates were offered for the border lands before 1732. By that time the tide of German and other immigration was streaming from Pennsylvania across Maryland into the Valley of Virginia, and it is possible that the plan was partly intended to induce some of these people to settle in Maryland.

At all events, it was proclaimed in 1732 that any person

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<sup>9</sup> Calvert Papers, No. 2, pp. 241-42.

<sup>10</sup> Calendar of State Papers, Colonial Series, America and West Indies, 1696-1697, p. 422.

<sup>11</sup> Calvert Papers, No. 2, p. 57.



having a family, who would actually settle on any of the back lands of the north and west boundary between the Potomac and the Susquehanna river, might have two hundred acres in fee without payment of any part of the forty shillings per hundred acres caution money, the quit-rent at the rate of four shillings sterling per hundred acres to begin three years after settlement. Unmarried persons might have one hundred acres on the same terms.<sup>13</sup> By the instructions to Edmund Jennings in the next year provision was made for the continuance of this policy by permitting the governor and the judge of the land office to grant lands on the frontiers or borders at whatever rates seemed to them proper.<sup>13</sup> These favors were not confined to the boundary and western lands, however, for we find that many settlers seized an opportunity to take up land on the borders of Somerset and Worcester counties, with an indulgence of six months in which to pay the caution money. The judges of the land office spoke so favorably of this scheme that the proprietor empowered Governor Ogle to extend it to the rest of the Eastern Shore.<sup>14</sup> It was later found advisable to appoint separate officers to carry to the frontiers the facilities for taking up lands without coming to Annapolis.<sup>15</sup> Land office papers show special accountings by these men for lands disposed of below the regular rates.<sup>16</sup> This policy contrasts with the proprietor's tendency toward increasing his demands; but by enabling settlers to occupy back lands and make one or more crops before being called on to pay any charges, it must have aided greatly in the settlement of the frontier, and ultimately must have increased the proprietary income.

In 1681 and 1684 the proprietor organized an office to manage the sale of his lands. Though the system was wrecked during the troubles of the royal period, the idea was retained, and after the restoration a new organization

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<sup>13</sup> Archives, vol. xxviii, pp. 25-26; Kilty, p. 230.

<sup>13</sup> Land Office, Warrants, Liber EE, p. 306; Kilty, p. 232.

<sup>14</sup> Kilty, pp. 239-40.

<sup>15</sup> Ibid., p. 76.

<sup>16</sup> Calvert Papers, MS., Nos. 921 and 924.

was set up. In 1715 Philemon Lloyd was commissioned as deputy secretary by Thomas Beake and Charles Lowe, who at that time were jointly secretaries. By virtue of this commission Lloyd assumed the title of "judge of the land office," and appointed Edward Griffith to be register and keeper of the land records. Lloyd was formally commissioned by the proprietor four years later. He was succeeded by Edmund Jennings in 1732, Levin Gale in 1738, and Philip Thomas in 1744. In 1764 two judges were appointed, and the office continued to be double from that time to the Revolution. By their commissions the judges of the land office were to grant warrants for taking up lands, to hear such cases as might arise in connection with this business, "and to decide them according to right reason and good conscience" and the several instructions sent them by the proprietor.<sup>17</sup> That is, they were to take entire charge of the issue of land patents, and to hear and decide all disputes that should arise in the course of these transactions. The instructions show, however, that the land office was always under close scrutiny by the proprietor, and that on important matters the judges were often required to have the advice and consent of the governor and the agent.<sup>18</sup>

Under the judges of the land office the chief officials were the surveyor generals and the examiner general. The surveyor general was an officer of old standing; before the close of the seventeenth century it had become customary to appoint a surveyor general for each shore. After the restoration of the province in 1715, however, the person who held the governorship was always commissioned surveyor general of the Western Shore.<sup>19</sup> About the only duties of these officers were the appointment of a deputy surveyor in each county and the transmission of instructions and warrants to and from these deputies. After the appointment of the examiner general the surveyor general even ceased to see the warrants returned by the deputies.

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<sup>17</sup> Kilty, pp. 231, 269-70.

<sup>18</sup> See instructions to Jennings, in Kilty, p. 232.

<sup>19</sup> Archives, vol. xiv, p. 557.

In 1722 John Gresham was appointed "examiner general of all plats and surveys made by the several surveyors of each county."<sup>20</sup> It is probable that his and his successors' duties were to see that the surveys returned by the deputy surveyors were in due form, to make certain that the amounts included were correct, to see that the land lay in a compact body and was not strung out so as to include none but good land, and to take care that the lines coincided as nearly as possible with the lines of former grants so that there should be no small parcels of ungranted lands left interspersed among the granted lands. These duties were very badly carried out,—probably, Kilty thinks, because of a conflict of powers between the examiner general and the surveyor general in the control of the deputy surveyors.<sup>21</sup>

In order to take up lands through the land office the applicant came first to the proprietor's agent and paid the purchase price<sup>22</sup> for the amount of land required. The receipt for this was an order to the judges of the land office for a common warrant for the specified number of acres. The warrant, when made out by the clerk or register of the land office and signed and sealed by the judges, was directed to the surveyor general of the proper shore, and theoretically was delivered by him to the deputy surveyor of the county in which the patentees desired the land to be located. In practice, however, the patentee himself probably took the warrant to the deputy surveyor.<sup>23</sup> The deputy surveyor then surveyed the land in whatever part of the county the patentee desired, and having done so, returned to the examiner general the warrant, with a certificate describing the situation and bounds of the land. When satisfied as to the correctness of the certificate, the examiner affixed his endorsement of approval and sent it again to the land office,

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<sup>20</sup> Kilty, p. 295; Archives, vol. xxv, p. 346.

<sup>21</sup> Kilty, pp. 271-72; Archives, vol. vi, p. 405.

<sup>22</sup> This was £2 sterling per hundred acres from 1717 to 1738 and £5 sterling per hundred acres from that time until the Revolution.

<sup>23</sup> Such was the case with a warrant mentioned in the Lower House Journal, August 5, 1732. The sale of warrants also shows that the patentees must have had possession of them.

so that a patent might be drawn up. When this patent was sealed by the chancellor, it might be taken out by the patentee whenever called for, and it constituted a title to the land described. If, however, the land to be taken up had been cultivated by some one who had no right to it, or if it was contiguous to land already held by the applicant, the procedure had to be varied so as to permit the officers to collect an extra payment to cover the value of any improvements there might happen to be. In this case the applicant came at once to the judges of the land office, and petitioned for a special warrant to survey certain specified land or for a warrant to resurvey his own land with leave to include the contiguous tract. This warrant then followed the same channels as the common warrant, with the exception that the deputy surveyor returned a full description of the land and its improvements, from which the judges of the land office placed a valuation on the property, and that the patent issued only after the patentee had settled with the agent for the regular purchase price and any additional sum that might have been demanded for the improvements.<sup>24</sup> Governor Sharpe wrote that he could suggest no improvements in this procedure, and he tells us that it was generally recognized as the most regular and unexceptionable scheme of land-granting in all North America.<sup>25</sup>

Though the grant was not complete until the patent issued, yet the warrant was salable at any stage of its progress. Moreover, the applicant might even divide his warrant and sell it off in parcels, so that on the one warrant several patents would issue granting parts of the land to various

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<sup>24</sup> This scheme was abused by persons who secured warrants and permitted them to go as far as the return of the certificate, but did not take out the patent. By this means the land was held, but neither purchase price nor quit-rents were paid. In 1730 it was proclaimed that after the expiration of two years all lands held on such certificates longer than two years would be considered again open to warrant and survey. On August 13, 1732, this threat was proclaimed to be in effect, and several later warrants show that it was not idle.

<sup>25</sup> Archives, vol. vi, pp. 403-5; Case of Lord Baltimore, 1733, among uncatalogued state papers in the Maryland Historical Society.

persons. In 1712 Charles Carroll, while agent in control of land affairs, was instructed not to permit this petty assignment of warrants; but the practice was never stopped.<sup>26</sup> Throughout the period persons frequently took out warrants without any intention of taking up the land, but merely for the purpose of selling the warrant either as a whole or in parcels.

Notwithstanding the fact that the land office was open to all comers, the warrant had a monetary value because of the caution money and the enormous fees which had to be paid before obtaining it. Each official mentioned above and many deputies and subordinates who are not mentioned were paid entirely by the fees of their offices, so that every possible service in preparing and executing the papers demanded a separate reward. Since the land was looked upon as the private property of Lord Baltimore and the land office was regarded as his personal affair, these charges were left untouched by the wholesale reductions in fees made by the legislature. Only now and then did the Lower House show a tendency to find fault with the costs of the land office.<sup>27</sup> When the tobacco inspection bill was under consideration in 1747, the legislature was about to reduce the land office fees along with all others; but a reminder of the private nature of land affairs was sufficient to cause them to leave those charges as before.<sup>28</sup> Thus it happened that in the later colonial period the fees of the land office were much higher than those in any other branch of the government, and constituted a severe burden on the settler. In 1764 Daniel

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<sup>26</sup> Kilty, p. 276; see also numerous assignments among the land warrants.

<sup>27</sup> Upper House Journal, October 31, 1724.

<sup>28</sup> "When the Inspection Law first took place & the Assembly were for applying their pruning Knife to the Fees of the Land-office etc., they were told, that this office was peculiarly his Lordship's; that, as he might demand what he pleased for his Lands, so might he regulate these Fees, as he thought fit; that it was nothing to the People, it was not a publick office to which They were obliged to apply, it being in their option whether They wou'd take up Lands, or not; that the Fees were to be consider'd as part of the Terms of the Purchase, w<sup>ch</sup> my Lord, had a right to fix" (Dulany to Calvert, in Calvert Papers, No. 2, p. 242).

Dulany wrote to Secretary Calvert, "Petitions, Draughts of petitions, orders, Warrants, Renewments, Recordings again, Examinings, Patents, Recordings again, Seals, to say nothing of Perquisites, contingent Hearings, & Lawyers fees, are very expensive in Maryland." He further estimated "that the Fees charged by the Judges or Registers of the Land-office, Surveyors, Examiner, Clerks, Chancellor, amount to an annual sum of at least, by the most moderate Computation, Half a Million of Tobacco."<sup>20</sup>

True to this policy of non-interference with the proprietor's personal affairs, the Lower House during the period under consideration never made a serious effort to meddle with the land business; but mutterings of discontent were frequently heard. There seems to have been woeful ignorance of land matters both in England and in America,<sup>20</sup> as the only documents relating to them were in private letters and books of instructions. In 1729, therefore, it was resolved by the Lower House to be a grievance that the terms on which land was granted were not made public, and it was ordered that the committee which was then transcribing the records should collect these conditions in one book.<sup>21</sup> In the same year the judicial powers of the judge of the land office were taken into consideration; and though the house showed discontent that such wide jurisdiction should be exercised by one not responsible to the legislature, yet the matter was passed over without action.<sup>22</sup> In 1732 the Lower House undertook an extended investigation of the method of reserving lands on warrants without issuing patents. The committee appointed to look into the matter found that several warrants issued for amounts of land varying from ten to ten thousand acres each had been located in enormous tracts which were not definitely fixed, thus tying up all other warrants for land in those territories until the surveys should be made. In this way three or four men held

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<sup>20</sup> Calvert Papers, No. 2, p. 241.

<sup>21</sup> Lower House Journal, August 4, 1729.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., July 30, 1729.



options on all vacant lands on the Potomac, between the Monocacy and the Susquehanna, and back of the Eastern Shore settlements from the Pennsylvania line to Dorchester County.<sup>33</sup> Although these abuses were causing prospective settlers to pass on to Pennsylvania and Virginia, yet the matter was held over to the next session and nothing was done.<sup>34</sup> Probably mere exposure of the abuse was sufficient to bring it to an end.

On one point the assembly did interfere in a small way with land affairs. In the erection of towns the act granting the charter sometimes made special provisions regarding town lots, fixing the prices at which they might be purchased, interfering with the escheat, and even abolishing the quit-rent. Acts of this sort led to controversies between the two houses of assembly, and one act for Princess Anne Town even received the proprietary dissent.<sup>35</sup> It was not very important for the legislature to control land affairs, because in the patenting of lands the interests of the proprietor and of the people were not very divergent. Both were benefitted by getting the lands taken up and settled, and difficulties arose chiefly through the selfishness of a ring of office-holders and grantees who disregarded the rights of proprietor and people alike.

One of the greatest frauds against the proprietor was in the matter of surplus lands. The ignorance, and often the knavery, of deputy surveyors caused them in many cases to include within the lines run much more land than the warrant called for. It was very easy for a surveyor to satisfy his conscience by the argument that a little land more or less cut out of the forest would be a matter of indifference to Lord Baltimore, who still had thousands of acres going to waste. It would, therefore, be folly to take any

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<sup>33</sup> The same object was accomplished in a smaller way by failing to mark the boundary tree and showing different lines to persons who contemplated patenting adjoining land; thus land was held open on each side of the true grant (Chancery Record, December 26, 1752, Liber BT No. 1, p. 176. *Lordship v. Spalding*).

<sup>34</sup> Lower House Journal, August 5, 1732.

<sup>35</sup> Calvert Papers, No. 2, p. 154.

great trouble in measuring accurate lines through difficult places, to refuse to oblige a friend, or even to reject a tempting bribe. Under these conditions it was to be expected that the grants would show great inaccuracies of acreage. Two, three, five, and even ten times as much land was sometimes included in the survey as was called for in the grant.<sup>86</sup> The excess was generally called surplusage.

The resumption of these surplus lands by the proprietor was an undertaking of considerable difficulty. In the first place, the surplus had to be discovered, and the owner himself was probably the only one who knew of its existence. It was very difficult, therefore, for the proprietary authorities to proceed of their own accord. It was also claimed that the grantees had nothing to do with the surveying, and that if there was any mistake, it was made by the grantor's own agent and the proprietor should be the loser. Moreover, the legality of the proprietor's claim was questioned. The patents were always for lands within certain bounds containing a certain number of acres "more or less," and the holders of surplusage insisted that this phrase precluded all claims for land above the specific amount. During the last half of the seventeenth century the doctrine was worked out that these words covered not over ten per cent. one way or the other,<sup>87</sup> but it was impossible to get any such rule accepted by the people.

In the early period of the proprietary government, probably through the activity of the officials, many persons were brought to resurvey their land and take up the surplus; but this ceased when the proprietor's grip was loosened during the royal period, 1689 to 1715.<sup>88</sup> The legal disputes at this time caused Lord Baltimore to submit the case to Sir Edward Northey, one of the crown attorneys, who returned an opinion unfavorable to his client.<sup>89</sup> With this additional handicap, nothing could be accomplished under the govern-

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<sup>86</sup> Case of Lord Baltimore.

<sup>87</sup> Kilty, p. 199.

<sup>88</sup> Ibid., p. 196.

<sup>89</sup> Calvert Papers, No. 2, p. 89.

ment as it then existed; and though the claims were not abated, all active support of them was suspended.

On the restoration of the province, however, it was inevitable that the matter should be fought out to a conclusion. We shall see reasons for suspecting that an act for maintaining boundaries, passed in 1718, was a veiled attack on this claim.<sup>40</sup> But the proprietor's victory on this occasion did not embolden him immediately to take any aggressive action, and not until 1733 was there any decided move in the matter. Among the instructions to Edmund Jennings, judge of the land office, in that year was one commanding him to inform the attorney-general of any surplusage that might come to his attention, in order that proceedings might be instituted to make void the patent. In case of annulment of the patent, Jennings was to issue a new one to the patentee for the same number of acres that the old one had called for, and to regrant the surplusage to any one who should apply, charging for caution money whatever seemed proper to the chancellor (governor) and the agent, and reserving a quit-rent of four shillings sterling for every hundred acres.<sup>41</sup> On June 14, 1733, the very day after the dating of these instructions, a proclamation was issued calling attention to the fact that in spite of repeated warnings many persons, depending on the clause "more or less," had neglected to take up their surplusage. Notice was given that all who failed to take up such surplusage within two years should be proceeded against by law to vacate their grants as fraudulently gained. The proclamation further threatened that no person who allowed the time to elapse should ever obtain a grant for such surplus; any one discovering it should have a preemption on the land and two years' rent free.<sup>42</sup>

This was a bold attempt, and it created a stir among landholders. Sir Edward Northey's opinion that surplusage was not recoverable by the proprietor was much made use

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<sup>40</sup> See p. 26.

<sup>41</sup> Land Office, Warrants, Liber EE, p. 308; Kilty, p. 233.

<sup>42</sup> Archives, vol. xxviii, p. 44; Kilty, p. 200.

of among the people to assure themselves of the impossibility of that procedure. Consequently, on the advice of the governor, it was decided that the case as stated to Northey was unfair to the proprietor,<sup>43</sup> and it was again presented to a crown lawyer, this time to Thomas Lutwyche. Again, however, the decision was unfavorable;<sup>44</sup> but in spite of the lawyers' opinions the proprietor went on to execute his threat. On January 12, 1735,<sup>45</sup> there was issued the first warrant to a discoverer of surplusage, giving the right to resurvey the lands of another, as had been promised in the proclamation; and such warrants continued to be issued for several years, the last being dated July 12, 1738. They created much confusion among the holders of surplus lands, and caused an outcry all over the province.<sup>46</sup> But the proprietary authorities braved the storm, and the attorney-general filed several cases in chancery for the purpose of vacating grants on the plea that they contained surplus. This seems to have increased the opposition, and in the legislature of 1739 it was reported as a grievance that the lord proprietor had issued these proclamations of pernicious consequence to the peace and safety of the people, tending to raise law suits and dispossess families of long tenure. It was also considered a grievance that the attorney-general had filed his suits in chancery "to the subver-

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<sup>43</sup> Gov. Ogle to Lord Baltimore (Calvert Papers, No. 2, p. 89).

<sup>44</sup> Lutwyche wrote as follows on December 28, 1733: "I am of opinion that the grant is good, for tho where a grant is made by the Crown and the King is deceived in his grant, the grant is void in law, yet I do not know that it is so in case of a Ld. Prop. of a Prov. unless there may be some law made for that purpose. But upon the head of fraud I shd. think that if anything of that appears in the case, a court of equity shd. give relief as they do in other cases where people are imposed on, and where such collusion appears between the officers and the grantee with intent to deceive the Ld. Prop. I think it is reasonable that the Ld. shd. have relief provided a bill is brought in a reasonable time; but without voiding the former grants by some legal or equitable method, I do not think new grants can be lawfully made" (Uncatalogued state papers in Maryland Historical Society).

<sup>45</sup> Land Office, Warrants, Liber FF, p. 73.

<sup>46</sup> Kilty, p. 197. Kilty says that he was "informed that the claimants under such patents did not succeed at law."

sion of the Landed Estate or Property of the Good People who have honestly paid for the same."<sup>47</sup>

Although very many persons were thus brought to take up their surplusage,<sup>48</sup> the general dissatisfaction proved too much for the proprietor. As early as 1735 he showed signs of weakening, for a proclamation of that year offered as a special favor to waive the section of the earlier proclamation which had threatened that none who failed to take up their surplusage before June 14, 1735, should ever obtain a grant for such surplus.<sup>49</sup> The cessation of the issue of warrants to discoverers of surplusage was another acknowledgment of weakness; and if, as Kilty was informed, the suits were decided against the discoverers, this fact must have completed the defeat of the lord proprietor. At all events, the attempt to push the claim to surplus lands was carried little further. The claim was not surrendered, however, for instructions to Governor Ogle in 1743 permit him to grant surplus, not at a rent of four shillings sterling per hundred acres according to the proclamation of 1733, but at the same rate as in the original grant, the purchasers paying the purchase money, interest thereon, and rent from the date of the original grant.<sup>50</sup> Except in very recent grants these terms were less liberal than those of 1733. Although Kilty says that after 1747, petitions for resurvey seldom mention the taking up of surplus land as a reason for the survey,<sup>51</sup> yet it is probable that such lands continued to be taken up. In 1754 Governor Sharpe wrote that in many counties people were so anxious to secure their lands against any possibility of dispute that there was

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<sup>47</sup> Lower House Journal, May 31, 1739.

<sup>48</sup> In 1739 there were but 10 resurvey warrants issued between June 23 and December 31; in 1734 there were issued 113 such warrants; in 1735, by June 14, when the time limit was to expire, there had been issued 80, and for the whole year the number was 105; the numbers for later years were as follows: 1736, 69; 1737, 81; 1738, 43; 1739, 61; 1740, 59. Most of these resurvey warrants were to take up surplus.

<sup>49</sup> Kilty, p. 201.

<sup>50</sup> Archives, vol. xxviii, p. 256; Kilty, p. 237.

<sup>51</sup> Kilty, p. 198.

no need to issue a proclamation urging them to take up surplus.<sup>52</sup> Later in the year Sharpe again wrote that the conditions of 1743 were too rigorous, and that if the taking up of surplus were permitted without paying arrears of rent, many persons holding large amounts would resurvey at once.<sup>53</sup> In 1756 a proclamation was issued granting such terms. It reminded the holders of surplus land that their grants might be invalidated, but as an act of leniency offered to permit all who applied within two years to take up their surplusage at the same rate as the original grants allowed, without paying any arrears of rent.<sup>54</sup> Probably the increasing scarcity of lands caused their possessors to take more care of their titles than previously, so that no further efforts of this nature were ever necessary. At all events, we hear of no more attempts to force the landholders to take out patents for their surplusage.

Somewhat entangled with the matter of surplus lands was the question of boundaries. The system of granting lands led to no regularity in size, shape, or location of grants. The proprietary instructions always forbade what was technically known as stringing,—that is, running the lines so as to avoid undesirable land,—and ordered that the grants be run as nearly as possible in the form of a rectangle.<sup>55</sup> But in the loose government of the proprietor, giving orders to the judges of the land office and getting the deputy surveyors actually to carry them out were very different matters. The officers were in such close association that it was of little use to put one to look after another. Consequently grants of land assumed all sorts of fantastic shapes, running wherever a vein of fertile soil enticed, and avoiding gullies, swamps, and the undesirable parcels. To maintain such intricate boundaries in the midst of a virgin forest was a problem requiring the most painstaking care. The most accurate surveying and plotting and the best of

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<sup>52</sup> Archives, vol. vi, p. 38.

<sup>53</sup> Ibid., vol. vi, p. 92.

<sup>54</sup> Kilty, p. 203; Maryland Gazette, January 22, 1756.

<sup>55</sup> See instructions to Edmund Jennings, in Kilty, p. 232 ff.

boundary stones would still have left room for disputes to arise, but neither of these aids to accuracy was to be had. The surveyors were planters of the counties, appointed through influence with the surveyor general, and often with only the roughest knowledge of surveying. Moreover, the persons who were interested in having the lands strung out or underestimated were often friends, relatives, and men who paid well, while those who were interested in having the work carefully and accurately done were far away in Annapolis and London. The objects used for boundaries were frequently of a temporary nature—rarely a small stone set up, occasionally a natural object, sometimes a road, which at this period was very temporary, but usually a tree marked to show that it determined a line. In Kent County, it is said, even a pigsty and a haycock were used to mark the lines of surveys. With such careless surveying and such perishable monuments it is not surprising that the maintenance of boundaries became a problem of great difficulty.

In the general code enacted in 1715 there was included an act for ascertaining the bounds of lands. A board of five men in each county was empowered to try all cases without the formalities of a court. They might inform themselves of the facts by hearing testimony, by visiting the lands, or by any other convenient method. Review of their decision could be obtained only by petitioning the governor for a special commission, on which the governor might appoint a member of the council or of the provincial court and two persons skilled in surveying to rehear the case.<sup>56</sup> The act was to run three years, but it was repealed and a new act was passed in 1718, which was somewhat similar to the one of 1715, except that it provided nine commissioners in each county, from whose decision there lay only the ever permissible appeal to England.<sup>57</sup> The object of this law, as expressed in the preamble, was to provide "A

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<sup>56</sup> Bacon, *Laws of Maryland*, 1715, ch. 45; text given in Kilty, app. xvi.

<sup>57</sup> Lower House Journal, May 1, 2, 1718.

Remedy for the more Exact Settling the bounds of all such Antient Surveys as have been darkly & Unskillfully Express," to prevent the great cost of trials by juries in the provincial courts and the frequent appeals to the superior courts, and to provide against the necessity that the poorer inhabitants were sometimes under of giving up their lands rather than undertake the expenses of a journey to Annapolis and prolonged litigation.

The storm which arose over the act indicated that there must have been more at stake than the convenience of a few suitors. Philemon Lloyd speaks in a letter to London of the discussion the law was causing in the province and of the many high-handed decisions by commissioners from which there was no appeal, and suggests that the finality of the commissioners' decision might affect the claims of the proprietor to any surplus lands that should happen to be included within the lines of a tract.<sup>58</sup> It is not impossible that the proposal was a dark scheme to attain this end. At any rate, the proprietor vetoed the bill,<sup>59</sup> thus leaving the colony without any special regulation of boundaries. As the veto message had found fault especially with the lack of appeal, the Lower House at once proceeded to remedy this defect; and in spite of the opposition of the Upper House succeeded in securing a special commission of review in each county, thus avoiding all schemes that would throw the final decision into the hands of the regular courts.<sup>60</sup> A great number of petitions for relief against unjust decisions by the commissioners, which had already accumulated before the house, were also referred to these commissioners of review.<sup>61</sup> This act, like the former, received the dissent of the proprietor; and although the

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<sup>58</sup> Calvert Papers, No. 2, pp. 1-20.

<sup>59</sup> Lower House Journal, April 21, 1720.

<sup>60</sup> Kilty, app. xvi.

<sup>61</sup> Lower House Journal, April 18, 20, October 14, 1720. Notice especially the complaint against Thomas Addison of Prince George County and his indignant replies, in Lower House Journal, April 13, 1720.



Lower House undertook to support it by an address to Lord Baltimore,<sup>62</sup> the latter held firm.

If it was the purpose of the Lower House during these controversies to aim a blow at the proprietor's claims to surplus lands, the purpose must have been given up when it was found that the address to Lord Baltimore brought no results. The next year, 1722, a penalty of five thousand pounds of tobacco was imposed on any one interfering with boundary trees;<sup>63</sup> and the following year, 1723, without any apparent friction, an act was passed permitting the county courts, on the petition of any one seized of lands, to grant a commission of four freeholders, who might examine witnesses or inform themselves in any other way concerning the proper bounds of the lands in dispute, and who should record their findings among the county records.<sup>64</sup> These records were then final evidence in all land cases. This act continued throughout the colonial period, and the numerous records of such commissions testify not only to the smooth working of the law itself, but also to the enormous number of boundary disputes which arose during the period.<sup>65</sup>

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<sup>62</sup> Lower House Journal, August 5, 1712.

<sup>63</sup> Bacon, 1722, ch. 8.

<sup>64</sup> Ibid., 1723, ch. 8.

<sup>65</sup> In 1750 and at various times thereafter bills were introduced to establish the boundaries of lands by means of processions. It is impossible to say what was the object of trying to revive this quaint custom, but the bill always received a prompt defeat in the Upper House. Coming at this time of controversy, the bill strongly suggests some covert attack on the proprietary privilege (Lower House Journal, May 11, 1750, May 5, 1761, etc.).

## CHAPTER II

### THE CHARGES ON LAND

The chief purpose of the proprietor's policy was to create a permanent revenue from the province. His land grants, therefore, were not in fee simple, but retained certain permanent liabilities. These liabilities were the escheat, the alienation fine, and the quit-rent.

The lord proprietor met less determined opposition to his claim to escheats than to his claim to surplus lands. The charter gave Lord Baltimore an undoubted right to all escheats, but it did not define what an escheat was. In England at this time lands could escheat only in two ways—by failure of heirs, and by attainder of blood; but Baltimore seems to have extended the escheat to include also forfeiture by suicide or treason and failure to conform to the conditions of the grant. Failure of heirs was also given broad interpretation, and was made to exclude certain relatives who would ordinarily be considered very close heirs.<sup>1</sup> Cases are found which would indicate that without a will a father could not inherit from a son or a man from his wife.<sup>2</sup> These may be exceptional cases, however, as there probably never was a definite rule laid down to govern the subject. Whether controlled by any definite regulations or not, escheats must have returned a large revenue to the proprietor. A new country such as Maryland during the first half of the eighteenth century must have contained an exceptionally large proportion of persons without any

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<sup>1</sup> Kilty, in referring to the cases which constituted failure of heirs, says: "What they were can be judged only by inference from particular cases, for no precise instructions from the proprietary on that subject are to be found on record, and the laws of the province are silent about it. I should suppose that if a man died without leaving heirs of the whole blood in the direct descending line his lands were held liable to escheat" (p. 175).

<sup>2</sup> Kilty, pp. 175, 184.

known relatives; and this, coupled with the numerous situations which occasioned land to escheat, gave rise to the great number of such cases appearing in the records.<sup>3</sup>

Like surplusage, escheats were sometimes hard for the land office to find. Whenever they came to the attention of the proprietor's agent or other officers, they would be proceeded on by the attorney-general; but many cases never came to the attention of such officers. In order to lead to their discovery, therefore, it was customary to allow the discoverer the preemption of the land at two thirds its value;<sup>4</sup> and after the early part of 1736 a quit-rent of only four shillings sterling<sup>5</sup> was reserved, though common lands continued for two years longer to bear a quit-rent of ten shillings sterling. Though many escheats are recorded, it is difficult to say how great an effect these offers produced.

Notwithstanding the large number of escheats occurring all over the province and the very questionable character of the proceedings when considered in the light of the English law of the day, opposition to the process developed late. Not until nearly 1760 was there any great protest. Bordley, writing on July 4 of that year, speaks of "Restoring those Rights to ye Same state of Security in which they were not long since; for 'tis but lately that they have been . . . attacked." The same letter describes a trial before the provincial court in June, 1759, from which it appears that in fact some of the judges on that bench were inclined toward the new doctrine of the illegality of escheats. The lawyers opposing the escheat boldly declared, first, that the death of a father and a grandfather seized of the lands

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<sup>3</sup> See the numerous regrants of escheat land shown in the warrant books at the land office.

<sup>4</sup> See instructions to the judge of the land office, in Kilty, p. 234. See also proclamation of June 17, 1733, in Archives, vol. xxviii, p. 45. Kilty says that as the improvements on the land were all valued and added into the purchase price by the officials, this offer might easily be defeated if the officials saw fit to value these too highly (p. 174). For an instance that failed, see Archives, vol. vi, p. 13. This also shows the hardship and confusion which enforcement of escheats sometimes caused.

<sup>5</sup> Land Office, Warrants, Liber FF, p. 118.

which in each case descended to the son constituted a bar to an escheat which had occurred before the grandfather came into possession; second, that the receipt of quit-rents from a person seized of lands was a bar to an escheat which had occurred before he came into possession; and third, that possession of lands for twenty years was a bar to escheat. Through very irregular proceedings and the favor of the jury the opposition won its case. The anti-proprietary party made a great effort to show that this decision completely broke down the proprietary claims to escheats, and the proprietary party was equally strenuous in showing that it was decided on grounds which did not affect that claim.<sup>6</sup> The latter party seems to have prevailed, for the escheats were enjoyed by the proprietor on down to the Revolution, but probably in the face of an ever increasing opposition.

Another liability which Maryland lands suffered through the feudal character of the province was the alienation fine. Since the year 1658 patents had carried a clause requiring a fine equal to one year's rent on every alienation, or transfer, of the land. During the first twelve years of the period under consideration these fines, along with the quit-rents, were commuted for a tobacco duty;<sup>7</sup> but from 1732 on to the Revolution they were always collected wherever possible.

The collection of alienation fines would have offered little difficulty had it been necessary to record all transfers of land, for in that case the exchanges could easily have been taken from the land records and charges could have been entered against the land. Indeed, the clerks themselves might have been instructed not to record an instrument until the fine was paid; but the state of the law was not so favorable. In 1715 an act was passed for the enrollment of transfers, by which all deeds of bargain and sale, to have binding legality, had to be recorded. This law was in force in 1733 when, at the expiration of the commutation act,

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<sup>6</sup> Bordley to Sharpe (Maryland Historical Society, portfolio iv, no. 53).

<sup>7</sup> See below, pp. 34-39.

alienation fines again became due; but since the enrollment act mentioned only deeds of bargain and sale, the people soon resorted to various schemes of transferring land by instruments of a different nature, which needed no recording and did not, therefore, betray to the collectors the fact that there had been an exchange. By such means the payment of alienation fines was so frequently avoided that the claim yielded little profit to the proprietor.

Though the people avoided payment of alienation fines, they seem only once to have set on foot a popular movement against them. About 1735, when efforts were being made to squeeze out surplusage and to increase the quit-rents, a similar effort was put forth to extend the alienation fine to all transfers of land by devise. All of these particular transfers had to pass through the hands of the commissaries, thus furnishing convenient data from which to make up the collectors' accounts, and offering a tempting field for the extension of the proprietary claims. Sharpe ascribes to Daniel Dulany, the elder, the first suggestion that the proprietor was legally entitled to these payments.<sup>8</sup> On somebody's suggestion, at any rate, the proprietor, about 1735, ordered his agent to collect fines from all devises of land. This order created opposition in the province; some refused to pay; and in 1739 the committee of grievances of the Lower House of Assembly reported these demands as an innovation and a grievance.<sup>9</sup> Three years later the agent was instructed to forego this claim, in consequence, the colonists believed, of an unfavorable opinion rendered to the proprietor by some lawyer of England.<sup>10</sup> Thus ended the greatest controversy that ever arose over the alienation fine in Maryland.<sup>11</sup>

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<sup>8</sup> Archives, vol. ix, p. 504. Sharpe is clearly wrong in dating this suggestion 1742; it is evidently a guess.

<sup>9</sup> Lower House Journal, May 28, 1739.

<sup>10</sup> Archives, vol. xxviii, p. 291; Kilty, p. 239; Archives, vol. ix, p. 504.

<sup>11</sup> J. W. Thomas seems to have mistaken the alienation fine on devise for a heriot, and concludes from this instruction that the heriot had existed in Maryland down to this time (Chronicles of Colonial Maryland, p. 94).

After this defeat the proprietor's insistence on alienation dues seems to have lagged a little. Fines were still collected as in the past, but for some years there was no special effort to increase the revenue from this source. In 1754 Sharpe suggested the novel and ill-omened scheme of a parliamentary stamp tax as the only means of ever bringing all deeds to enrollment, for the assembly, he said, would never bring this about.<sup>12</sup> Some time during the later fifties, however, Daniel Dulany, the younger, wrote to Secretary Calvert suggesting that a much greater revenue could be obtained from alienation fines.<sup>13</sup> The elder proprietor, with his experience of the early opposition, had by this time passed away, and Frederick was persuaded by Dulany's letter to assert his claims even at the risk of incurring the popular displeasure. He seems to have supposed that if all the fines were paid they would have amounted to as much as the quit-rents, and he wrote to Sharpe in 1761 to push their collection, even ordering that fines on devises be again demanded.<sup>14</sup> Dulany himself could not accept the advanced idea put forth, and he sacrificed much of the favor of Lord Baltimore by denying that a non-payment of alienation fines gave the proprietor a legal right to reentry on the land. Fortunately for Frederick, he was represented in the colony by officers wiser than himself; and these officers, on this occasion standing between him and the people, prevented all attempts at a rigorous enforcement of the policy concerning alienation fines.

After the victory over fines on devises, opposition to alienation fines seems not to have been a very popular movement. The people felt the need of a compulsory enrollment of deeds, and on several occasions, notwithstanding the opportunity thus given to discover alienations, passed laws

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<sup>12</sup> Archives, vol. vi, p. 99.

<sup>13</sup> Calvert Papers, No. 2, p. 196.

<sup>14</sup> Archives, vol. ix, p. 503. Baltimore's idea of the amount of the fines appears ridiculous when we remember that the fine was equal to one year's quit-rent, so that all the land in the colony must change hands each year to make the fines equal the rents.

for this purpose. In each case, however, the bill was in some obscure way killed by amendments in the Upper House.<sup>15</sup> The bill to this effect brought forward in 1764 seems to have been in every way acceptable to the proprietary party, but when it came into the Upper House, the councillors, in spite of Dulany's opposition, insisted on a bold amendment making the payment of the alienation fine essential to the validity of all transfers. The Lower House, as Dulany had predicted, promptly refused to concur.<sup>16</sup> Thus from greed, or from a blind insistence on what they thought their rights, a favorable opportunity for making the alienation fines yield their full value was thrown away. The policy of the Lower House in this respect seems always to have been to leave the proprietor unmolested in collecting what fines he could, but to do nothing that would recognize his right or aid him in its exercise.

In some ways closely connected with the alienation fine was the final burden on Maryland lands—the quit-rent. From the very beginning the proprietor had reserved to himself a perpetual quit-rent from all lands granted. We have seen<sup>17</sup> that in successive conditions of plantation the rent was gradually raised from twenty pounds of wheat to four shillings sterling, then to ten shillings sterling for every hundred acres, being finally reduced to four shillings sterling again; and that it was left to the discretion of the agent and judges of the land office to ask more when the lands would bear it. It is now in order to examine the quit-rent with regard to methods of collection, the hardships which it brought upon the people, and some of its results on the colony.

Although the quit-rents were always<sup>18</sup> payable in sterling money, the lack of specie during the seventeenth century

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<sup>15</sup> Lower House Journal, May 20, 1756; May 5, 1761. It is not safe to conclude that in each case the Upper House was pursuing the same stupid policy as in 1764; the Lower House may have framed bills too obnoxious to pass.

<sup>16</sup> Calvert Papers, No. 2, pp. 234-37; Archives, vol. xiv, p. 174.

<sup>17</sup> See above, p. 9.

<sup>18</sup> A few early grain rents must be excepted.

made it necessary to accept them in tobacco; and this brought up unavoidable disputes as to the value of tobacco. In 1671 the proprietor agreed in payment of alienation fines and quit-rents to accept tobacco at the rate of twopence per pound in consideration of a duty of one shilling per hogshead on all tobacco exported. This agreement ran on until the death of Charles, Lord Baltimore, in 1715. Because of the increase in the value of quit-rents and an enlargement in the size of the tobacco hogshead the duty was then raised to eighteen pence sterling per hogshead. This continued until 1717 when, at the suggestion of Governor Hart, Lord Guilford, who was guardian of the young Lord Baltimore, intimated that a duty of two shillings sterling on every hogshead of tobacco exported would be accepted as a full discharge of all quit-rents and alienation fines. This offer was accepted by the Lower House, and a bill embodying the agreement was quickly passed.<sup>19</sup>

Although on the face of it this agreement seems a great sacrifice by the proprietor (and it was always spoken of by the proprietary officials as such), yet the enormous difficulty, expense, and loss in the collection of a few pounds of tobacco each from several thousand people scattered over the whole colony account for the willingness of the proprietor to exchange his claims for a fixed duty, with the collection of which he had nothing to do. We have no figures showing the total amount of quit-rents due at this time, nor the amounts collected either immediately before or immediately after the agreement; but it is certain that no proprietor had ever before received so great an annual income as was received after the passing of the act.<sup>20</sup> The proprietor, consequently, seemed very willing to renew the bargain on each of its earlier expirations.<sup>21</sup> About 1725, however, persons represented to him that the rents due

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<sup>19</sup> B. W. Bond, jr., "The Quit Rent in Maryland," in *Maryland Historical Magazine*, December, 1910, p. 351.

<sup>20</sup> Address of Governor Hart (*Upper House Journal*, 1720).

<sup>21</sup> Like many colonial laws, it ran for only a limited period. It was renewed in 1720, 1721, 1723, 1726, 1729, and 1730.



amounted to above £6000, while the net receipts from the duty were less than £3000, and he seems to have become a little restive concerning it. Governor Charles Calvert's speech in 1726 bears a trace of this uneasiness in that it reminded the Lower House that Lord Baltimore gave up half his revenue by accepting the agreement, but it also stated that for the good of the people he was willing to renew it.<sup>22</sup> As the time for renewal in 1729 approached, the restiveness increased, and produced a strong letter from Governor Benedict Leonard Calvert, which seems to have convinced the proprietor of the advantages of his bargain.<sup>23</sup>

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<sup>22</sup> Governor's address (Upper House Journal, July 14, 1726).

<sup>23</sup> This letter reads in part as follows: "I shall now trouble you with a Word or two, upon the General situation of Affairs in Government, that I may receive your Advices and Instructions in the fullest manner; and I think by taking a View of the relation the people bear to you and you to them, in the points of Interest, I shall best Explain myself to you; You are their Proprietary of the Soil, and as such, the people from time to time owe you and may be Compelled to pay you Rents and fines; you and they have for some years past compounded for their Value another Way. The people, grow Jealous, that you have too good a Bargain; you on the other Side, have been I believe informed that the Amount of Yr. Rent Roll exceeds vastly, the Equivalent you Accept of. I must deal so Candidly, as to give my Opinion, that their seems Error in Computation on Both sides. It is Certain the people Could no ways so Easily, so insensibly pay their Rents as by this method now they are in. The Poor and Orphans, scarce bear any share in the present payments. The Husbandmen, from the Produce in Stock and Tillage pay nothing, which is a great Incouragement to Husbandry, so necessary and beneficial to a Young Country. In short the traders who purchase Tobacco, bear the greatest share, from the Shoulders of the planter; and yet it is as nothing to such trader; for as Mr. Bennett, a great and knowing trader here Observes, the trader gets as much for his goods as he Can, in Tobacco, having Allways the whip hand of the Planters necessitys for Cloath and Tools; and when people are aiming at getting such Advances on their goods as from 100 to 200 p<sup>r</sup>. Cent, the Value of 2<sup>r</sup>. p<sup>r</sup>. Hogshead Duty is scarce Calculated or even thought of. Thus in General is the Composition easy and almost Insensible to the people.

"To you I think it of a like Nature, since first the payments are regular and good, with the least trouble so much money can be Collected with. I Do not believe your Rent Roll, can amount to above 6000 p<sup>r</sup>. Ann. which could it be Collected, great Defalcations must be allowed for Charges and Losses in the Collection. It would be allmost impracticable to get Bills of Exchange for a regular remittance of the produce; if they could be got, it Could not be under less than 8 or 10 p<sup>r</sup>. Cent premium.

"The Philadelphians frequently are obliged to give near that

From this time to the expiration of the act the proprietor was always ready to renew it.

Although the proprietor gained by the bargain, the people probably did not lose. In the first place, the duty was laid so indirectly<sup>24</sup> that it was scarcely felt, while the old method of payment required an actual outlay and inconvenience on the part of the planter. In amount, moreover, the planters probably paid less than they had done before,<sup>25</sup> and certainly less than they would have paid had the rents been collected in sterling according to the grants, or in tobacco at its market price. It was estimated that in 1724 the total of rent due was about £5225 12s., while the average duty for seven years netted only £2855 12s.<sup>26</sup> We find, however, that from the very beginning the people were somewhat dissatisfied, and feared that the proprietor had the best of the bargain.<sup>27</sup> The main objection on the part of the people at the early period of the arrangement might justly have arisen from its inequalities. The local merchants and others who shipped large amounts of tobacco without possessing the land from which it was raised might very well have complained that the duty was negligible on the small quantities in which they often received their tobacco, so that it was impossible to shift the burden to the shoulders of

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premium for Bills; and the greater the Demand for Bills would grow, the Higher Premium would be Exacted. But alas, they Cannot be Collected, there is not money enough here to be got to make regular payments from time to time, So that your officers must take Corn, Wheat, Beef, Pork, Tobacco or some Commodity of the Country, the Conversion whereof into money, and from money into Bills, must be a Vexatious, Expensive, and almost an Endless an Insuperable task. I shall say no more at present, but pray for the Continuance of the Agreement" (Calvert Papers, No. 2, pp. 72, 73).

<sup>24</sup> It was paid by the merchant to the collectors and deducted from the planter's tobacco returns.

<sup>25</sup> Governor Calvert lays stress on this in his argument for renewal.

<sup>26</sup> Acts of Assembly, 1730; Bond, p. 357.

<sup>27</sup> Governor Hart says that no proprietor ever received a greater income "nor were ever the Tenants better pleased or more easy in their Possessions" (Upper House Journal, Speech, 1720). We must allow for Hart's vanity, as he was very proud of having brought about this arrangement.

the actual land-owner from whom the rents were due.<sup>28</sup> A second objection might have come from the planters who tilled all their land. These were called upon by the act to help pay quit-rents on the large tracts of forest which their wealthier neighbors held for speculation.

How much these classes really complained it is impossible to say. The complaints which come to light are of a different nature. Governor Hart, when recommending the renewal of the act in 1720, spoke of "the designing Insinuations of Its Self Interested accusers who on pretence of Friendship would impose on his Lordship to his own & the Country's damage."<sup>29</sup> If we can draw any conclusion from these words, it must be that already there were persons in the colony who thought the proprietor had the best of the bargain and who "would impose on his Lordship" by reducing the duty. The same sentiment is shown by a complaint of the Lower House later in this session that the proprietor had a better opportunity than the people to judge of the bargain.<sup>30</sup> When the renewal bill was drawn, some vital change was made which so altered the nature of the old act that the Upper House insisted on its being limited to a single year,<sup>31</sup> in order, probably, to give the proprietor an opportunity to reject it if he wished.

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<sup>28</sup> In *Sotweed Redivivus* (Maryland Historical Society, Fund Publication No. 36, p. 46), written in 1730, occurs the following passage (the italics are mine) :—

"A Tax equivalent has laid  
Upon Tobacco, must be paid,  
By Merchants, that the same Export,  
In Bills, before it quits the Port.  
*But what is worst for Patent Lands,  
By others held, it Debtor, stands.*

I must confess, 'tis just and true,  
That Caesar should be paid his Due:  
But one Man to monopolize  
*More Land, than yet he occupies,  
And Foreigners the Quit-Rents pay,  
In Sterling Coin, is not fair Play:*  
A Grievance ought to be suppress'd,  
By Ways and Means, Caesar knows best."

<sup>29</sup> Address of Governor Hart (Upper House Journal, 1720).

<sup>30</sup> Lower House Journal, April 8, 1720.

<sup>31</sup> *Ibid.*, April 20, 1720; Archives, vol. ix, pp. 542-43.

With this unpropitious beginning, the commutation act entered on a career of ever decreasing popularity. Governor Calvert speaks of the increasing jealousy of the people.<sup>22</sup> The act, however, passed safely through the renewal periods of 1721, 1723, and 1726. Between 1728 and 1730 repeated efforts were made to pass a bill reducing the number of tobacco plants that might be attended by a single taxable. Since this would naturally decrease the amount of tobacco shipped and thus affect the proprietor's equivalent for quit-rents, the Upper House always insisted on a recompense for the loss. In dealing with this recompense the Lower House showed considerable indifference toward the whole commutation arrangement. In 1728 it was argued that recompense was just, but that the proper time to deal with it was the next year, when the act should come up for renewal.<sup>23</sup> The next year, however, the compensation was refused, and in a message the Lower House said indifferently that the proprietor could do as he pleased concerning the bargain.<sup>24</sup> As the tobacco bill failed to pass, the quit-rent renewal stood unmolested. The whole matter was fought over again in 1730 when, after much debate and several efforts to appropriate funds which were used by the proprietor for other purposes, the Lower House finally agreed to make up any deficiency so that the total revenue received by the proprietor should amount to at least £2855 12s. sterling, which had been its average during the past seven years.<sup>25</sup>

Before the return of the time for renewal, the Lower House adopted the rule of recording its votes by yeas and nays, which permits us to analyze more closely the feelings of the province toward quit-rents. When the commutation act came up for renewal in 1732, it was passed by a vote of 26 to 20. Of the affirmative votes, 21 were from the Eastern Shore and 5 from the Western; of the negative votes 3 were from the Eastern Shore and 17 from the

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<sup>22</sup> See above, p. 35, n. 23.

<sup>23</sup> Lower House Journal, October 23, 1728.

<sup>24</sup> Ibid., July 30, August 2, 1729.

<sup>25</sup> Laws of 1730.

Western.<sup>86</sup> The next year (for the renewal had been limited to a single year) the act was defeated by a vote of 21 to 26, 16 Eastern Shore and 5 Western Shore delegates voting for it, and 6 Eastern Shore and 20 Western Shore delegates voting against it.<sup>87</sup> This decided sectionalism can be easily accounted for by the different products of the two shores. It will be shown later that the Eastern Shore was beginning by this time to abandon the cultivation of tobacco for that of grain, so it is not surprising that Western Shore tobacco producers objected to having their crop taxed to pay the quit-rents of the Eastern Shore grain growers. How long this antagonism had been the root of the dissatisfaction with the quit-rent commutation it is impossible to say. There are reasons for believing that throughout most of the Eastern Shore the cultivation of tobacco did not begin to decline until some time between 1720 and 1730. If such is the case, this could not have caused the uneasiness with the quit-rent bargain which appears as early as 1720. But at all events these votes and similar ones in subsequent years<sup>88</sup> make it almost certain that the divergent interests of the producers of grain and tobacco had more to do with the later difficulties and final defeat of the commutation than had the suspicions that the proprietor had the best of the bargain.<sup>89</sup>

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<sup>86</sup> Lower House Journal, July 25, 1732.

<sup>87</sup> Ibid., April 3, 1733.

<sup>88</sup> The crux of the question came to a vote in 1735 when "The Question was put whether in an application to be made to the Lord Baltimore about farming the Rents it shall be proposed to charge Tobacco with any further duty for that purpose or not. Resolved in the Negative," 21 to 23. All the negative votes were from the Western Shore, and all but one of the affirmative votes from the Eastern Shore. The one Western Shore affirmative vote was by Richard Francis, a delegate from Annapolis, who had a brother in the Eastern Shore delegation (Lower House Journal, April 15, 1735).

<sup>89</sup> Strangely enough, N. D. Mereness fails to catch this point. He calls attention to the fact that the four western counties and Annapolis furnished 17 out of the 26 votes that defeated renewals in 1733; but he then suggests that these counties were those least adapted to tobacco culture, and concludes that it was a matter of frontier opposition to the proprietary (Maryland as a Proprietary Province, p. 82).

When the revenue bill was seen to be defeated, the proprietor proceeded at once to reorganize the system of collection, which had fallen to pieces during sixteen years of disuse. The governor was instructed either to farm out the rents for a sum of from twenty to twenty-five per cent. less than the total of the rent-rolls, or to appoint in each county, if he thought best, a receiver who should collect the rents on a commission of ten per cent. of the amount collected. In either case such security as met the approval of the agent and the attorney-general should be required. Over these farmers and receivers was placed one general rent-roll keeper for each shore, who was to receive five per cent. of the total rent-rolls of those counties of his shore which were farmed out, and five per cent. of the amount collected in those counties which were collected directly.<sup>40</sup> The duty of the general rent-roll keepers seems to have been to make up each year rent-rolls for the several counties of their shores and transmit them to the farmers and receivers. As this required that they keep track of all changes in the ownership of land and all new grants, resurveys, and the like, the judges of the land-office were specifically instructed to send them each year a list of all such transactions. Moreover, since alienation fines were to be collected by the same organization, the county clerks were required to furnish the rent-roll keepers with a list of all alienations.<sup>41</sup> All these officers—general rent-roll keepers, farmers, and receivers—were to be under the general supervision and control of the governor and the agent. Under this scheme St. Mary's, Charles, and Prince George's counties were soon taken to farm by one company, and Baltimore and Anne Arundel counties by another,<sup>42</sup> but beyond this it is not known which counties were farmed out and which were collected.

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<sup>40</sup> Archives, vol. xxviii, pp. 67, 68. This is the interpretation which Ogle put upon the instructions, but they read as if the proprietor had intended that one system of collection or the other should extend over the entire province.

<sup>41</sup> Instructions to Jennings, in Land Office, Warrants, Liber EE, pp. 306-9; Kilty, pp. 232-34.

<sup>42</sup> Calvert Papers, No. 2, p. 89.

According to the provisions of the grants, quit-rents were payable only in sterling money. It was sixty-two years, however, since this had been legally enforceable, and in actual practice it had never been strictly carried out. In 1733 all laws on the subject expired; and since there was more money in the province at that time than there had been before 1671, the proprietor determined to demand payments in specie. This requirement, when the system settled down into working order, proved to be the undoing of the people. Though there was more specie in the province than ever before, there was not yet enough to make it easy to collect between £4000 and £5000 each year. Persons accustomed to have all their dealings in tobacco and barter found it difficult to procure even the few shillings a year necessary for the payment of their rents, and those in possession of foreign gold and sterling money took occasion to demand excessive exchange from persons in need of it.<sup>43</sup> Benedict Calvert did not much exaggerate the difficulty when he wrote that not enough money could be found in the province to pay the rents, and that the collectors would be obliged to accept grain, tobacco, pork, and other country produce.<sup>44</sup>

The difficulty in procuring money formed the basis of nearly all the complaints raised by the Lower House against the collection of quit-rents. In 1735 both houses of the legislature agreed that the inhabitants were under great difficulties in the payment of their quit-rents,<sup>45</sup> and an address to the governor prepared in that year says that the discontinuance of the commutation act was "attended with greater Difficulties and Inconveniencies than could have been foreseen; Which Difficulties Must Encrease in proportion to the Scarcity of Gold or Silver in the Country."<sup>46</sup> An address

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<sup>43</sup> See the complaint of one Hooper of Dorchester County, who in 1753 "was obliged to take up Sterling Money, at the high Exchange of one Hundred *per cent*" (Lower House Journal, October 9, 1753).

<sup>44</sup> See above, p. 34, n. 23.

<sup>45</sup> Upper House Journal, April 15, 16, 1735.

<sup>46</sup> Lower House Journal, April 19, 1735.



to the proprietor repeated this idea.<sup>47</sup> Throughout the period during which this question was under discussion no objections seem ever to have been raised to the amount of the rent, but only to the scarcity of specie and the methods sometimes used in collection.

Not only was there difficulty in procuring coin, but the rates at which it was received were unsatisfactory. In March, 1735, the proprietor gave orders that in all payments to him foreign and cut gold coins, which passed current in Maryland at £4 2s. 6d. per ounce, should not be rated above £3 10s., leaving a margin to cover both the over valuation of gold and the premium on bills to transmit it to England.<sup>48</sup> The demand that the expenses of transmission to England be borne by the people was in no way a part of the bargain and was entirely illegal. Possibly complaints against this exorbitant rate reached England, for later in the year foreign gold was put up to £3 14s. 6d.,<sup>49</sup> and later to £3 16s. 9d.,<sup>50</sup> placing it, as was said, at the rate of exchange which it bore in London.<sup>51</sup> Notwithstanding these advances, in 1737, in the course of an investigation into the collection of quit-rents with special reference to the farmers, the Lower House passed a strong general resolution that the extortion of foreign gold and silver at any rate under the sterling value was illegal and oppressive.<sup>52</sup> Shortly afterwards the agent was instructed to receive gold at £3 17s. 6d. per ounce; silver was also raised from 5s. to 5s. 3d.<sup>53</sup> Probably to help allay further discontent, the governor in his speech at the opening of the next session of the assembly commented on this favorable rate.<sup>54</sup> These terms became fixed by custom,

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<sup>47</sup> Upper House Journal, April 23, 1735.

<sup>48</sup> Calvert Papers, MS., No. 278.

<sup>49</sup> Ibid., No. 295½.

<sup>50</sup> Ibid., No. 278.

<sup>51</sup> The exact value of this currency cannot be determined, as it consisted of various foreign coins of different alloys. An ounce of pure gold, however, was worth, then as now, a little over £3 17s. 9d. In 1735 the proprietor wrote that foreign gold was then worth in London £3 17s. 9d.

<sup>52</sup> Lower House Journal, May 17, 1737.

<sup>53</sup> Calvert Papers, MS., No. 295½, p. 29.

<sup>54</sup> Upper House Journal, May 3, 1738.



and remained unchanged throughout the period under discussion.<sup>56</sup>

An aggravation of the difficulty was caused by the methods employed by some of the farmers. In 1737 so many complaints were laid before the committee of grievances of the Lower House that a long investigation was made, by which it was shown that in the two farmed districts—Baltimore and Anne Arundel counties, and St. Mary's, Charles, and Prince George's counties—foreign money, which constituted the main element of the currency of the province, was regularly taken at about two thirds of its value, sterling bills of exchange were discounted at two and one half per cent.<sup>56</sup> to cover possible losses and were required to have iron-clad security, and paper money was accepted only at a two hundred per cent. advance. These rates were forced on the people by distraints, with heavy costs for the slightest objection or delay. On some occasions sterling coin was insisted on, and when it was found impossible to procure this medium, distraint was immediately laid. Moreover, shameful relations were shown to exist between the farmers of the revenue and the sheriffs, by which they divided the sheriffs' fees accumulated by these oppressions.<sup>57</sup> On the report of this committee the farmers were reprimanded by the house, and the governor was asked to prosecute them.<sup>58</sup>

From this time until 1754 complaints against the tax-farmers are numerous. In 1747 the sheriff and the farmer of Charles County were accused of oppression.<sup>59</sup> In 1748 it was brought to the attention of the governor and the council that the farmers and the sheriff of Frederick County had been regularly collecting illegal fees, but they were let off with a mere recommendation to do better.<sup>60</sup> In 1749

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<sup>56</sup> Archives, vol. xiv, p. 213.

<sup>57</sup> It must also be remembered that bills of exchange were usually at from five to ten per cent. premium.

<sup>58</sup> Lower House Journal, May 12, 1737.

<sup>59</sup> Ibid., May 19, 1737.

<sup>60</sup> Ibid., June 9, 1747.

<sup>61</sup> Archives, vol. xxviii, pp. 420-24.

the committee of grievances of the Lower House investigated charges of illegal distraints in Baltimore County, and William Young, the farmer, received a reprimand from the house and a bill of costs amounting to £7 2s. Illegal rates for gold were also complained of at this time.<sup>61</sup> Young seems to have been an habitual offender, for in both 1753 and 1754 complaints are heard against him.<sup>62</sup> In 1753 the receivers of rents seem to have been trying to collect arrears of old standing, and Thomas Muir, the receiver in Dorchester County, was accused of overcharging and demanding excessive bond in a suit for rents overdue since 1715. The governor was again asked to prosecute, but it is doubtful whether he ever complied.<sup>63</sup>

Such complaints from the assembly and the province in general brought the agent, Edward Lloyd, in 1754 to require all farmers and receivers of quit-rents to advertise, by putting up notices in the most public places, at what rate they would receive foreign coin in lieu of sterling.<sup>64</sup> This scheme, by merely informing the people of their rights, prevented any possibility of fraud in the rates. It would have been impossible to publish any rate above that set by the proprietor's instructions, and few were so ignorant as to permit themselves to be imposed upon by any departure from the published rates. It is probable that the practice did not continue very long, but one or two years would have been sufficient to set the customary rate; and thereafter, as Sharpe writes,<sup>65</sup> no farmer dared to raise his demands. It is hardly to be supposed that minor oppressions were not practiced by farmers against the weak and ignorant, yet the hardening of custom and the watchfulness of the Lower House held the collection of the quit-rents to such a standard of justice that we hear no further complaints.

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<sup>61</sup> Lower House Journal, June 13, 16, 23, 24, 1749.

<sup>62</sup> Ibid., November 13, 1753, December 20, 1754.

<sup>63</sup> Ibid., October session, 1753, *passim*.

<sup>64</sup> Calvert Papers, No. 2, p. 184.

<sup>65</sup> Archives, vol. xiv, p. 213.

When the people found themselves suddenly plunged into such heavy and unexpected difficulties as succeeded the discontinuance of the commutation act in 1733, it was natural for them to seek at once to strike a new bargain with the proprietor. The spring session of 1735 was the first meeting of the legislature after the collection of quit-rents had come into practice, and the delegates seem to have been almost unanimously<sup>66</sup> in favor of a renewal of some form of commutation. But in spite of their unanimity, the old differences between grain and tobacco producers soon reappeared. By a strict party vote it was decided not to impose any further burden on tobacco.<sup>67</sup> After much debate a very humble, almost fawning, address was adopted and sent to the lord proprietor. In it the Lower House admitted the great condescension of the proprietor in accepting the first agreement, acknowledged their mistake in refusing to renew it, complained of the miserable condition to which they were reduced, and humbly besought him to inform the governor whether he would accept for his quit-rents a lump sum to be raised in the easiest manner possible.<sup>68</sup> This is probably the most abject communication that ever passed between the Lower House and a proprietor, and for many years neither the Upper House, the governor, nor the proprietor ever let slip an opportunity to remind the Lower House of the position taken on this occasion.

The proprietor's reply, received the next year, stated that he was willing to accept any just equivalent, but failed to state what equivalent would be considered just.<sup>69</sup> Before this answer reached the assembly, another address had already been drafted asking that his lordship accept paper currency in payment of his quit-rents;<sup>70</sup> but this address

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<sup>66</sup> Without a division it was agreed to submit to the proprietor a proposition to farm the quit-rents (Lower House Journal, April 15, 1735).

<sup>67</sup> Lower House Journal, April 15, 1735; see above, p. 39, n. 38.

<sup>68</sup> Ibid., April 23, 1735.

<sup>69</sup> Ibid., April 20, 1736.

<sup>70</sup> Ibid., April 8, 1736. A paper currency had been issued in 1733.

was laid aside after the receipt of the proprietor's answer. Now by a series of partisan divisions the Eastern Shore delegation, with a few delegates from the Western Shore, carried the following resolutions, first, that an equivalent be offered, and second, that it should be a duty on tobacco of more than two shillings sterling per hogshead. But the Western Shore vote, with four delegates from the Eastern Shore, succeeded in carrying a resolution that this duty be less than three shillings per hogshead, and a strict shore-against-shore<sup>71</sup> vote established it at two shillings sixpence.<sup>72</sup> With the amount of the duty on tobacco thus determined, the difficult point was past; and the house quickly proceeded to bring forth a scheme which deserves some attention.

The lump sum to be offered the proprietor was fixed, in spite of the warning from the Upper House that it was too small, at £4000 sterling. This was to be raised by an export duty of two shillings sixpence on tobacco, to which were to be added the proceeds of the tobacco duty of one and one half pence already applied to the use of schools, a duty of five per cent. *ad valorem* on the importation of slaves, and a duty of one penny per gallon on imported liquors. Payment of these duties was to be in sterling money, but each tobacco trader and importer was to receive back in paper money at fifty per cent. advance the full amount of the duties paid in. Thus, in reality, the colony was merely to exchange with the importers paper money for sterling. Planters who shipped their tobacco direct were also to receive back in paper the full amount of the duty, as were importers of slaves and liquors. The quit-rents were then to be collected by the colony in paper money at fifty per cent. advance. This quit-rent money and the proceeds of

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<sup>71</sup> The vote of one delegate, Richard Francis, who represented Annapolis, must be excepted in most of these divisions; but it must be remembered that he had a brother in the Eastern Shore delegation and he himself probably belonged more to the Eastern than to the Western Shore.

<sup>72</sup> Lower House Journal, April 29, 1736.

the duty of twenty shillings sterling<sup>73</sup> on negroes, which was also payable in paper, were to be applied to refunding to the paper money office the bills drawn out to pay back the duties to the traders and shippers, all surplus being considered as public money.<sup>74</sup> Though such a complicated scheme could never have worked satisfactorily, it is still worth while to see what the Lower House hoped to accomplish thereby. These purposes were three: first, to relieve landowners of the difficulties which they were experiencing in procuring coin to pay their rents; second, to tap a source of sterling money from which to discharge the proprietary claims; and third, to leave the real incidence of the tax on the landowners, who justly owed it. In short, it was a scheme to collect the quit-rents in paper, in which they could easily be paid, and to exchange this paper with the traders for sterling, a money which the latter could easily procure. This ingenious scheme of finance never reached the test of practice, for the proprietor replied that he did not think his tenants could be thoroughly informed as to the value and increase of his rents, and he absolutely refused to sell them for £4000. He still, however, held out the hope that he would accept a just equivalent if one should be offered.<sup>75</sup>

The chief business transacted in relation to quit-rents during the next session of the legislature was the investigation into the complaints against exactions by the farmers, to which reference has already been made. Although the governor in 1739 strongly recommended that some effort be made to arrange for the payment of the rents in paper money,<sup>76</sup> nothing further was done until 1742, when the Lower House decided by a loose party vote to renew nego-

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<sup>73</sup> The word "sterling" used in such an expression as this does not mean that the duty was payable in sterling coin. There were several standards of value used in the colony—the shilling sterling, the shilling currency, etc.—and this merely fixes the standard of value.

<sup>74</sup> Lower House Journal, May 6, 1736.

<sup>75</sup> Ibid., April 26, 1737.

<sup>76</sup> Ibid., May 1, 1739.

tiations with the proprietor.<sup>77</sup> This time a more systematic method of procedure was inaugurated by applying to the governor for an account of the rents as collected, so that the house might the more intelligently consider an equivalent.<sup>78</sup> Though this request was ignored by the governor, the Lower House proceeded to petition the proprietor to accept an equivalent for his quit-rents in such manner and form as might best suit.<sup>79</sup>

No reply to this address reached the assembly until the May session, 1744; and then the proprietor did not invest the governor with power to conclude a bargain, but merely to transmit any offer the assembly might make. Again the assembly addressed the proprietor, offering him the proceeds from a duty of two shillings sixpence sterling per hogshead on tobacco, but not guaranteeing any minimum amount.<sup>80</sup> This duty on a normal exportation—about thirty thousand hogsheads—would have produced much less than the quit-rents were then paying, and at that time the European wars were reducing the chances of successful exportation. On the advice of his officers,<sup>81</sup> therefore, the proprietor rejected the proposal, but he empowered the governor to conclude such a bargain as he should deem just. At the opening of the next session, in August, 1745, the prospects for a new arrangement in regard to the quit-rent seemed more favorable than they had been for many years. Again the house asked for an exact account of the rents as collected and a statement of what would be considered a just equivalent. Governor Bladen replied that the total amount of the rents that year was £5369 11s. 3d., of which £4568 15s. 4d. had actually reached the proprietor, and that improved methods of collection then being introduced were expected to raise the proprietor's receipts to £5101 2s. 2d. Moreover, the increase had been very great during the last

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<sup>77</sup> Lower House Journal, October 15, 1742.

<sup>78</sup> Ibid., October 21, 1742.

<sup>79</sup> Ibid., October 27, 28, 1742.

<sup>80</sup> Ibid., May 2, 18, 26, 29, 1744.

<sup>81</sup> Calvert Papers, No. 2, p. 104.

five years, and many warrants and certificates were then awaiting patent, which would still further augment the rents. In view of these facts the Lower House was informed that nothing less than £5000 would be considered a proper equivalent.<sup>82</sup>

The receipt of this message started one of the most heated discussions ever carried on in the Lower House of the Maryland colonial assembly. From 1707 to 1742 there had been an equal number of counties on each shore, but the erection of Worcester County in 1742 and the exclusion of Frederick County until 1748 gave the Eastern Shore a nominal majority of two votes, which by the frequent division of the Annapolis vote made, when all were present, a working majority of four. With this majority the Eastern Shore delegates proceeded to rush through the house a bill offering the required £5000.<sup>83</sup> By the defection of three Talbot men and the deciding vote of the speaker they lost the plan to tax nothing but tobacco; yet a committee of three from each shore failed to agree to a tax on grain, and with the aid of two votes from St. Mary's and two from Baltimore the Eastern shore delegates defeated the grain tax. Another committee dropped all export duties except those on tobacco and lumber. There was also a contest of old standing being waged between the Patriot party and the proprietor over the support of the militia. The Patriots maintained that certain revenue which was being turned to the proprietor's personal use should properly be devoted to the defence of the province, and they consequently refused to make any further appropriation for the support of the militia. The war going on at this time made the matter acute, and Governor Bladen intimated that he would make

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<sup>82</sup> Lower House Journal, August 28, September 9, 10, 1745.

<sup>83</sup> The votes were shore against shore with the following exceptions: Three Talbot County delegates often voted with the Western Shore; the two Annapolis votes were usually split; occasionally two delegates from St. Mary's and more rarely one from Baltimore and one from Charles are found voting with the Eastern Shore. Shore feeling must have run high during this period, for on many other questions the division is almost as sharply drawn as on the quit-rents.

the acceptance of a quit-rent offer conditional upon the passage of a satisfactory militia bill. This condition seems not to have been distinctly understood by the delegates until after the passage of the quit-rent bill. When it did become understood, the advocates of the quit-rent measure made a desperate effort to revive the question, although the militia bill had already been rejected. Even the desire for a quit-rent commutation, however, was not sufficient to overcome the hatred of proprietary oppression, and the defection of eleven Eastern Shore delegates rendered the attempt hopeless. As the militia bill had failed, Governor Bladen, true to his threat, refused to accept the quit-rent proposal, thus bringing to naught the most promising effort to reach a new agreement since the rejection of the old one in 1733.<sup>84</sup>

Though the supporters of a quit-rent agreement were exceptionally persistent during 1745, yet, strangely enough, the question was never again raised in the assembly. For this omission there were several cooperating causes, the most important of which was the peculiar political turn given to the question by Governor Bladen. It was clearly evident that a renewal of the proposition would lead to the same condition concerning the militia bill, and that both would meet the same fate as before. The second cause was that increasing economic sectionalism made a large tobacco tax hopelessly unjust and unworkable, while a corresponding export duty on grain would have handicapped a trade in which every one rejoiced. The increase in the supply of gold and silver which began to make itself felt about this time also helped to make the payment of quit-rents easier, thereby lessening the demand for commutation. Finally, as the system of collection came to run more smoothly, opportunities for injustice were eliminated and the people became more accustomed to paying their rents. The problem of procuring sterling for rents, however, did not vanish. As late as 1763 the Lower House refused to change the tobacco inspection charges to a sterling basis because, as they said, the

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<sup>84</sup> Lower House Journal, 1745, *passim*.



people already experienced great difficulty in procuring enough sterling to pay their rents.<sup>85</sup> But in general after about 1745 the difficulty in the payment of quit-rents was not sufficiently acute to cause any widespread opposition.

After 1745, aside from the elimination of frauds against the people, the history of quit-rents is merely an account of the gradual working out of cheaper and more effectual methods of collection. When collection was resumed in 1733, as we have seen, the whole system had to be organized anew, and the cost of collection under the new system was either fifteen per cent. of the amount collected or a reduction of twenty per cent. to twenty-five per cent. from the total amount shown by the rent-rolls. Furthermore, the rent-rolls had not been kept during the period of the commutation, and they were so incomplete that vast quantities of land did not appear on them; it is probable, therefore, that the losses from omission were greater than the cost of collecting the remainder.

As the periods for the renewal of tax-farming contracts recurred, the agent was urged to improve the terms if possible;<sup>86</sup> but it seems that for many years no improvement was feasible. About 1745 there seems to have been a scheme on foot to have the sheriffs collect the rents at five per cent. commission; at least this proposition was made by the governor to the Lower House, but political reasons for the statement are very evident.<sup>87</sup> Aside from these two notices of doubtful significance there is nothing to show that any effort was made to improve the system of collection during the lifetime of Charles Lord Baltimore.

On the accession of Frederick, however, conditions changed. Frederick himself was a spendthrift, always demanding more and more revenue; and his uncle Cecilius Cal-

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<sup>85</sup> Lower House Journal, October 25, 1763. In some cases leases were so drawn that enough of the rent to discharge the quit-rent was payable in sterling and the remainder in currency (Baltimore County, Court Records, 1755, Liber BB No. B, p. 242; Cecil County, Land Records, Liber FL No. 13, p. 184).

<sup>86</sup> Calvert Papers, MS., No. 278.

<sup>87</sup> Lower House Journal, September 10, 1745.

vert, whom he appointed his secretary, was a man whose chief pleasure was to dabble in politics in Maryland and to increase the proprietary revenue. Calvert worked out a scheme for compelling the sheriffs, as part of their duties, to collect the quit-rents for a ten per cent. commission; but the expiration of the farmers' contracts in 1753 came too quickly for Governor Sharpe to get the plan into operation, and it became necessary to renew these contracts for two years more. Sharpe succeeded in getting a better bargain with the farmers, however, by which they agreed to increase the returns from eighty to eighty-five per cent. of the total rent due.<sup>88</sup> When these contracts expired in 1755, Calvert's scheme was put in practice. The sheriff in each county was also commissioned tax-farmer and was required to give bond for a sum equal to ninety per cent. of the total rent due from his county, as it appeared by the rent-roll delivered to him. The only reductions to be allowed were for mistakes in the preparation of this rent-roll and, probably, for certain large tracts of uncultivated land held by persons not in the colony.<sup>89</sup>

This method of collection lasted for about twelve years, but was never very satisfactory. The avarice of the proprietor led him to begrudge the ten per cent. for collection, and he tried to have it reduced to six per cent. The sheriffs, on the other hand, found the work unprofitable even at ten per cent., and it was only because of the large income from other duties of the office that men could be found to take it. On one occasion, indeed, no one in Frederick County was willing to accept the sheriff's commission, and it had to go to a man from Prince George's. In few counties did ten per cent. of the total rent due amount to more than £50, and much land was held by persons in other counties,<sup>90</sup> so that the cost of collection was more than the rent amounted to;

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<sup>88</sup> Archives, vol. vi, pp. 8, 13, 30, 54, 129.

<sup>89</sup> Ibid., vol. vi, p. 295; Provincial Court Record, Liber BT No. 5, p. 590.

<sup>90</sup> By a report to the Lower House on April 28, 1757, it appears that nearly eighteen per cent. of the land of Frederick County was held by persons living elsewhere.

all this was lost by the sheriff.<sup>91</sup> As the sheriffs looked upon the quit-rent farm as a burden upon their offices, it is not surprising that their payments were not so prompt as those of the private farmers who devoted their whole attention to the collection of the rents. It was because of this delinquency (due somewhat to the inactivity of the proprietor's agent, perhaps) that the collection of quit-rents was taken from the sheriffs about 1767 and restored to private farmers.<sup>92</sup>

The incompleteness of rent-rolls could have been remedied by more careful attention on the part of the officials, and some improvement was effected. Between 1740 and 1745 many persons who had occupied land after the survey and had never taken out final papers were forced to complete the patent and thus subject themselves to the quit-rent. With the exception of these cases, the compilation of complete rolls was a matter of searching through the land records from the patent to the last transfers to determine the acreage, the rent, and the owner. This was no small task, especially when the rent-roll keepers looked upon their office almost as a sinecure, and did no more in the execution of their duties than was absolutely unavoidable. Governor Sharpe was repeatedly urged to have the rolls better prepared, and he even made up the roll for one county himself, possibly in order to learn how difficult the work really was. By means of constant urging and with specific instructions and forms sent from England, the rent-rolls were gradually worked into better condition; but even as late as 1760 their condition was such that Sharpe could write, "Much Waste has been & now is of Quit Rent not in Possession of the Proprietor . . . the present Condition and Management of the Office is a Reproach of Misdemeanor in publick Employment."<sup>93</sup>

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<sup>91</sup> Archives, vol. ix, p. 428; vol. xiv, pp. 213-14.

<sup>92</sup> Ibid., vol. xiv, p. 375.

<sup>93</sup> Ibid., vol. ix, p. 404. The extreme inefficiency of Edward Lloyd in the office of agent, or receiver general, was responsible for much of this disorder.

It is now in order to establish as far as possible the economic effects of the quit-rent. Such matters are not easy to decide even concerning times like the present, when all possible data are at hand. To reach very definite conclusions about Maryland in the eighteenth century is extremely difficult, but some few points may be shown to be very probable.

The first step in respect to the quit-rent is to determine its proportion to the value of land. A four shilling quit-rent on one hundred acres of land worth over a thousand pounds and paying rent in proportion would not be a very heavy tax; but if the land was worth only a few pounds and paid only ten or twelve shillings rent, it would be an intolerable burden. Neither of these extremes is the true state of the case. Land showed a steady increase in value throughout the colonial period. In 1720 it was worth about 4 or 5 shillings per acre. At this rate the quit-rent was from .8 to 1 per cent. of the value. As the amount of patented land increased, the proportion of the quit-rent fell until in 1765 it was, perhaps, not above .2 per cent. These figures, however, are for the average value of land, including improved and unimproved. Allowing for the value of improvements, the proportion of the quit-rent will amount, perhaps, to 1 or 2 per cent. in 1720 and from .5 to 1 per cent. in 1765. The quit-rent must also be estimated in proportion to the rental value of land. In 1740 land rents in the more thickly settled counties were, perhaps, from £3 to £5 per hundred acres. The quit-rent of 4 shillings is between 4 and 7 per cent. of this rent. Allowing again for the value of improvements, which was not far from half the value of the land, the quit-rent will amount to from 7 to 12 per cent. of the rental value of land.

These rates represent about the same proportion of rental value as does a modern tax rate of one dollar on the hundred; but it must be remembered that in colonial Maryland the regular tax in support of government was a poll-tax, and that the quit-rent was an additional charge not expended

for governmental purposes. In comparing the quit-rent with a modern property tax it must also be kept in mind that a general property tax is proportioned to the value of the property, but that the quit-rent fell with equal weight on the highly valuable land of Anne Arundel and Talbot counties and the almost worthless land of Dorchester and Frederick. In those frontier counties to which new settlers were most apt to come the quit-rent amounted to two or even three per cent. of the value of the land. Moreover, heavy as the quit-rent was in 1720, it had been still heavier in the preceding years. Except along the frontier, where land could not assume a value much above the price demanded by the proprietor for patent land, the proportionate severity of the quit-rent constantly diminished with the lapse of time and the increase of values. By the time a piece of land had come to be worth fifteen or twenty shillings per acre, therefore, the quit-rent had spent its force, and had already accomplished its full results for good or evil.

Thoughtful men at the time, though as unable to make specific statements regarding the injuries done by this tax as are we today, were vaguely conscious that the quit-rent was a burden on general prosperity. The higher prices both from sale and rent brought by land in Pennsylvania was a burning question in the minds of many Marylanders. The clergy tax,<sup>94</sup> fees collected by land officers, negro labor, population, healthfulness, market facilities, caution fees, and quit-rents were all thought to be factors in the condition;<sup>95</sup> but no one seems to have appreciated the value of the labor of hard-working German farmers as contrasted with the more easy-going Marylanders. On one thing, however, all were agreed: the land charges—purchase price and quit-rents—in Maryland could not be increased. We have seen how Sharpe and Lloyd opposed an increase in quit-rents in

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<sup>94</sup> A tax of forty, then thirty pounds of tobacco per taxable laid for the support of the clergy. In 1764 Dulany wrote of the ill effects of this tax (Calvert Papers, No. 2, p. 240).

<sup>95</sup> Calvert Papers, MS., No. 1161; Calvert Papers, No. 2, p. 241; Archives, vol. vi, p. 37.

1754, and how in 1764 Dulany wrote that an advance in the purchase price without a corresponding reduction of the officers' fees "wou'd effectually put a stop to the Business of the Land-office." A few years later Hugh Hamersley, when asked about the possibility of making the settlement of the Pennsylvania line an excuse for advancing the quit-rents to ten shillings per hundred acres, replied in a similar strain that he thought such a step would put a stop to all applications to the land office.<sup>96</sup> These expressions, though coming mostly from men personally interested in the fees of the land office, nevertheless have a ring of genuineness which shows that in the opinions of those who held them the quit-rents were at the highest point the land would bear.

The fears of these men were fully borne out by the results of the one experiment with a ten shilling quit-rent. It will be recalled that the quit-rent was fixed at four shillings per hundred acres in 1671, and the purchase price at forty shillings per hundred acres in 1717. The quit-rent was raised in 1733 to ten shillings per hundred acres, but in 1738 was put back to four shillings and the purchase price advanced from forty shillings to one hundred shillings. The effects of these changes on the business of the land-office were startling. During the five years preceding the advance of the rent to ten shillings, warrants were taken out for an average of 28,535 acres per year. During the six months following the advance there were warranted only 692 acres. In the next five years, during which the quit-rent remained ten shillings, the total acreages warranted were as follows: 1734, 2205½; 1735, 2357; 1736, 2368; 1737, 4255; 1738, 3991. In the next five years, although the purchase price was £5 per hundred acres instead of £2, the quit-rent was again four shillings per hundred acres, and the average acreage warranted was 16,439.<sup>97</sup> Thus the average amount of land war-

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<sup>96</sup> Archives, vol. xiv, p. 377.

<sup>97</sup> All these figures on land warrants are liable to serious errors. The object held in mind in compiling them has been to exclude all warrants that would bear conditions other than those prevailing at the time of their issue; also, renewals of warrants should obviously be excluded to prevent duplication. Undoubtedly some warrants

ranted per year under the ten shilling rate was about ten per cent. of the amount warranted during the last year under the four shilling rate, and about seventeen per cent. of the average warranted during the first five years under the reduced quit-rent and the advanced purchase price.

In the light of the foregoing figures and expressions of opinion it can scarcely be doubted that the quit-rent constituted a serious burden on the land of colonial Maryland and materially retarded the progress of the province. To the prospective settler seeking a home the colony could not offer as attractive inducements with such a burden as without, hence it is probable that many settlers turned off into other colonies who might otherwise have stopped in Maryland. In the advance of the Germans into the great Appalachian valleys Maryland was at first avoided. Many families moved from Pennsylvania across into Virginia apparently without thought of settling on the rich lands along the Monocacy through which they journeyed. This retardation of settlement was in all likelihood due to the burdens<sup>98</sup> resting on land in Maryland and the attractive offers of land

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bearing special rates have crept in undetected; but since taken all together such warrants are few, errors from this source are negligible. However, warrants of resurvey to include vacancy do not show the amount of vacancy until they reach the certificate stage, and vacant land taken up by this means is, therefore, entirely omitted. This omission runs through all three stages, and, consequently, will have little effect on the comparisons drawn. Another source of error, however, does affect the comparison, but entirely in favor of the argument here, that is, the number of warrants taken out during the high rent period which were never executed. Some were simply allowed to lapse; and many more, after the reduction of the rent, were surrendered and cancelled, and new warrants taken out on the payment of the increased caution fee. If such warrants could be deducted, the acreage shown here for the high rent period would be still further reduced.

<sup>98</sup> We must not understand the quit rent to be the only one of these burdens, but also include the entire amount of taxation. The regular taxes—poll assessments—were perhaps about the same in all three of these colonies. There were, however, certain special taxes. The quit-rent was higher in Pennsylvania than in Maryland and more than twice as high in Maryland as in Virginia. The fees due officials of the land office on every grant of land were higher in Maryland than in the others. There was a clergy tax in Virginia the same as in Maryland, but none in Pennsylvania. Thus, the entire burden in Maryland was greater than in either of the neighboring colonies.



on easy terms in Virginia. Though this is probably the only specific case<sup>99</sup> in which we can say that the hard terms in Maryland turned away prospective inhabitants, yet the great numbers of individuals who must have acted on the same principles, though it is impossible to demonstrate how many of them there were, constituted a decided loss to the province.

More beneficial and more far-reaching, perhaps, was the influence of the quit-rent and other land charges on the size of the holding in Maryland. In the early years of the colony, when the quit-rents were so low as to be almost negligible, enormous tracts were taken up and erected into the manors so prominent at that time. The average grant in Charles County before 1650 was nearly 1200 acres.<sup>100</sup> This average soon fell, however, with the advance of the quit-rents. Between 1650 and 1660 it dropped to about 200 acres, and it never again rose much above that amount.<sup>101</sup> During the five years just preceding the advancement of the quit-rent to ten shillings per hundred acres in 1735 the average size of the tracts warranted throughout the whole province was 158 acres; during the five years of the ten shilling rate this average fell to 74 acres; and during the first five years of the lowered quit-rent and advanced purchase price the average tract warranted rose to 105 acres.<sup>102</sup> The influence of the quit-rent in keeping down the amount of land held by an individual is also shown by the number of disclaimers to land which appear in the rent-rolls. Not

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<sup>99</sup> In 1737 the clergy of Maryland complained that the Quakers were persuading people on the border to transfer their allegiance to Pennsylvania because of the clergy tax (forty pounds of tobacco per taxable), which they called an intolerable burden (Acts of Privy Council, Colonial Series, vol. iii, p. 338).

<sup>100</sup> Rent Roll, 1750, in Maryland Historical Society. Resurveys are excluded from these figures as the books do not give the date of the original survey. As they are frequently for large tracts, consideration of them would, perhaps, heighten the contrast here drawn.

<sup>101</sup> The highest average for a decade after 1660 was 304 acres between 1690 and 1700. The land charges were being gradually advanced until 1671, after which they remained fixed until 1717.

<sup>102</sup> Warrant Books in the Land Office.



only did many persons merely disclaim the ownership of lands, but many acknowledged the ownership and deliberately surrendered their claims. Such entries as "This Land lett fall" or "Lett fall and the Patent returned" are very frequent. The Kent County debt book of 1735, for instance, shows eight disclaimers for land in that county amounting to 3409 acres.<sup>103</sup> These surrenders would never have occurred had there not been some expense attached to ownership of land. It is plain, therefore, that the quit-rent and, in a lesser degree, the purchase price were exerting a strong influence toward preventing individuals from monopolizing too much land. With smaller holdings naturally goes a better developed and more thickly settled country, with many planters of moderate means rather than a few of immense wealth.<sup>104</sup> The annual rent forced owners to develop their land and bring at least a part of it under cultivation.<sup>105</sup> This meant fewer woods, more plantations, and more people.

A more specific account of some ways in which the quit-rent attained these results will be given in the discussion of land speculation in the next chapter.

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<sup>103</sup> This may not be all the Kent disclaimers for that year, as the debt books present no formal list of them but only such as happened to be jotted down. This is, perhaps, an exceptional year for disclaimers since the payment of quit-rents had been resumed but two years before. The debt book is in the land office, and this list is in copy number one. Many other debt books also show disclaimed land.

<sup>104</sup> These seem to be just the points in which Maryland differed from her neighbors. In Virginia, where the quit-rents were lower, the landed estates were larger, population was less dense, and there was a greater number of very wealthy individuals. In Pennsylvania, on the other hand, where quit-rents were higher, landed estates seem to have been smaller, population seems to have been denser, and wealth better distributed. In Pennsylvania, however, there were many complicating factors such as race and agricultural conditions; and in either case, without a comparative study of two or more colonies, generalizations are extremely dangerous.

<sup>105</sup> Note the force of the quit-rent in the following appraiser's estimate: "We do find that the said Land is uncleared and of no use neither to said Dorris nor orphan and his Lordships rent high so that wee allow him to Settle the said land on the Lower End of said tract" (Cecil County, Land Records, 1735, Liber WK No. 2, p. 110).

## CHAPTER III

### THE MANAGEMENT OF LAND

The management of land is necessarily dependent on the question whether it is increasing or decreasing in value. In colonial Maryland the history of every landed estate is colored by the fact that the property was steadily becoming more and more valuable. In 1721 Hugh Jones commented as follows on the low value of land: "Though now Land sells well there [in Virginia and Maryland], in a few Years it will be more valued, since the Number of Inhabitants encreases so prodigiously; and the *Tracts* being divided every Age . . . into smaller Plantations; they at Length must be reduced to a Necessity of making the most of, and valuing a little, which is now almost set at Nought."<sup>1</sup> As Jones and others saw at the time, the value of land was advancing and had to continue to advance as long as the population continued to increase.

Between 1720 and 1730 land was worth about five shillings per acre. Sale prices according to the various deeds recorded in Annapolis during the years 1724 to 1730 vary between ninepence and £1 sterling per acre.<sup>2</sup> The average of sixty-two deeds was four shillings eightpence. As deeds recorded here are largely of speculative sales and contain an undue proportion of frontier and forest land, we must increase this average in order to get a figure representative of the whole province. About the same number of deeds recorded between 1763 and 1765 range between fourteen pence and £3 and average twelve shillings per acre.<sup>3</sup> The same objection holds with regard to this as to the former average—it is probably too small to represent the

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<sup>1</sup> Present State of Virginia, p. 61.

<sup>2</sup> Land Office, Deeds, 1724-1732, PL No. 6.

<sup>3</sup> Ibid., DD No. 3.

value of land throughout the province. The proprietor's first order to sell manor land fixed ten shillings sterling per acre as the minimum price to be accepted for the uncultivated land then offered.<sup>4</sup> There seem, however, to have been no sales under this order. Dulany wrote that manor land in general should bring about the same that would be brought by private land, and he suggested that to prevent jobbing none should be sold for less than £1 sterling per acre.<sup>5</sup> Sharpe in 1768 supposed the unsold part of Conococheague Manor to be worth about the same. He also says, in speaking of the sale of a tract in Anne Arundel County, that "the Bidders went so far as 31<sup>s</sup>. sterling p<sup>r</sup> acre."<sup>6</sup> From these figures and statements it may be concluded that in 1765 the normal value of medium land was about £1 sterling per acre, with forest and undesirable lands somewhat lower and with especially desirable lands running as high as £2 or £3 sterling. This is an increase of at least two or three hundred per cent. over the land values about 1725.

At a time when land was so rapidly increasing in value one would expect as a matter of course to find a great deal of speculation. Of speculation, however, in its narrower sense—securing lands at a low rate and selling them at a higher—the quit-rent was almost prohibitive. A transaction of this sort, involving three or four thousand acres, would necessarily extend over a number of years before the land could be disposed of, and during these years the quit-rents must be met or the venture would be a failure. The rent-rolls, therefore, show only a small number of entries bearing the marks of speculation.<sup>7</sup> A few patents appear

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<sup>4</sup> Archives, vol. xiv, p. 191.

<sup>5</sup> Calvert Papers, No. 2, p. 243. Dulany seems to have been anxious to have the proprietor sell his manors, and did not understate the price which they would bring. The proprietor accepted this advice as far as to set a minimum price of six shillings per acre on forest land and £1 per acre on cultivated land (Council Record, JR and US, pp. 418, 419).

<sup>6</sup> Archives, vol. xiv, pp. 335, 536.

<sup>7</sup> Wills also occasionally give evidence of speculation. That of Mathew Tilghman Ward in 1741 enumerated among the property of the testator "All those two Tracts of Land or Such Part thereof

which some years later are found parcelled out among several owners, with the original patentee sometimes entirely sold out, sometimes retaining only a small quantity of land, and sometimes still in possession of the greater part. In many of these entries the patentee retained a respectable plantation, which suggests either that the speculation was incidental to the taking up of a homestead, or that the patentee had attempted to carry too great a burden and had been forced to sell off a part. The weight of the quit-rent was sufficient to hold speculation of this character down to a comparatively small amount.<sup>8</sup>

The great mass of land speculation was carried on in other ways, for the more venturesome and businesslike in-

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as belong to Me called the Union of which there remains unsold and belonging to me between Six or Seven Hundred Acres; and the other Called the three Hicks Containing about One hundred and Sixty Acres" (Land Office, Wills, DD No. 1, p. 363). Nicholas Lowe in 1745 empowered his executrix within ten years after his decease "to give sell and Dispose of all that part of a Tract of Land Called Lowes Ramble [1440 a.] lying in Talbot County afs<sup>d</sup>. which has not been Disposed of by me for the best price that Can be Got" (Land Office, Wills, DD No. 3, p. 253).

<sup>8</sup> The following are typical entries:—

"Cedar Branch Neck; 841 a. Surveyed November 29th  
1700 for Mathew Smith beginning att a marked white  
Oak—Rent p Ann. 1..13.. 4.  
[Possessors in 1707] 250 to Thomas Browning, pays rent  
p Ann. ..10.  
100 To Charles Rumsey, pays .. 4..  
491 To Thomas Hopkins of Talbot Co. pays ..18.. 4  
481 1..13.. 4.

—Cecil County, Rent-Roll, 1707, p. 8.

"Maidens Fair Survd. 2 Oct<sup>r</sup>. 1731 for Rich<sup>d</sup>. Speake near Ready Branch

Poss. [1753] 100....John Cole  
50....Richard Speak  
300....William Sutherland."—Charles County, Rent-Roll, 1753, p. 113.

"Hudsons desappointment Originally called Quick Dispatch Resurv<sup>d</sup>. for Alexander McDonald 2 January 1741 Beginning at a Stone Standing on a Ridge Patented 24th August 1743.

Poss [1753] 84....Eliz<sup>a</sup>. Hudson  
33....Richard Griffith  
50....Jos. Ratcliffe  
84....George Waples  
87....Jos. Woodyard  
207....Alex. Macdonald."—Charles County, Rent-Roll, 1753, p. 131.

vestors devised schemes to avoid quit-rents. The most important of these schemes was to deal in land warrants rather than in land itself. The warrant, it will be remembered, was both transferable and divisible; that is, a person holding a warrant for a thousand acres might transfer five hundred acres, after which there would practically exist two warrants for five hundred acres each. In this way a speculator might take out a warrant for ten thousand acres, and with repeated renewals<sup>9</sup> let it rest until it was largely disposed of; or else he might have it surveyed and have a certificate returned, and then allow the land to rest at this stage until it was desirable to patent. The speculator was thus able to control a large tract without any expense for quit-rents, and at the same time was in a position to dispose of it in parcels, for each of which patent might issue as required. The enormous number of assignments and renewals shown on the warrant books is eloquent testimony to the great volume of this trade.

Some variations of this scheme are worth noting. In 1732 the Lower House complained that a few large land dealers were holding warrants without proceeding to survey and, by insisting that their warrants entitled them to locate the land wherever in the county they pleased and that no land could be surveyed in those counties until theirs had been laid out, they were obstructing all land business along large sections of the frontier.<sup>10</sup> Another variation of the plan was made possible by the changes in the conditions of plantation. When the quit-rent was advanced to ten shillings per hundred acres in 1733, those who held unexecuted warrants under the old four shilling rate found them suddenly assuming an augmented value. All sorts of half-forgotten claims to land warrants were brushed up for renewal under the old terms, and speculation in these warrants was rife throughout the province. At first only such claims were brought forward as entitled the possessor to

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<sup>9</sup> A warrant expired if not executed or renewed within two years after issue.

<sup>10</sup> Lower House Journal, July 28, 1732.

warrants bearing the old terms of rent, but after the advance of the purchase price in 1739 any claim whatever on which a grant of land might be had became of increased commercial importance.<sup>11</sup>

Several times the proprietor issued instructions apparently intended to stop this speculation. In 1712 Charles Carroll was ordered to permit no more transfers of warrants in parcels. This, if carried out, would probably have put an end to the business, as the partial assignment of warrants was an indispensable part of the scheme; but the order was never obeyed, and the breaking up of warrants, with its attendant speculation, went on undiminished until the end of the colonial period. In 1740 the land officers were instructed to make no grants exceeding one thousand acres, and that only in two patents of five hundred acres each.<sup>12</sup> This instruction may have prevented the patenting of a few large tracts, but its sting was removed in 1753 when its application was restricted to the well-settled counties, where no patentable tracts of this size were to be found.<sup>13</sup> Whatever may have been the proprietor's purpose in these orders, he must have found the opposition of the provincial leaders, who were the principal speculators, too great to be lightly opposed, for even open disobedience of the instructions was overlooked.

Under the head of land speculation may be included not only the taking up or warranting of large tracts for the purpose of selling at a profit, but also the holding of quantities of uncultivated land for the future enrichment of family estates in the course of many years. Among a people coming from England, where the idea of the aristocracy of land was so firmly entrenched, it was natural for social position to continue to be linked with the possession of land; and when these people found it in their power to secure enormous tracts of exceptionally fertile soil, it was

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<sup>11</sup> See the land warrant books for the period immediately following these dates for the great number of renewals and questionable petitions.

<sup>12</sup> Land Office, Warrants, LG No. A, p. 355; Calvert Papers, MS., No. 295½.

<sup>13</sup> Kilty, pp. 238, 240, 276.

to be expected that they would seize domains of a magnitude that would be beyond the imagination of their relatives in England. Land—next to gold the most powerful form of wealth they had ever known—was here for the taking, and they did not fail to take it. Men secured vast tracts which they could not possibly develop and, living on a small corner in which they had cleared a plantation, reserved the remainder for benefits to be reaped in the far future. Toward the end of the seventeenth century Edmund Randolph estimated that of the five million acres of patented land in Virginia not more than forty thousand acres, or less than one per cent., had been in the least rescued from its primeval condition.<sup>14</sup> In 1697 Governor Nicholson wrote to the Board of Trade that these large land holders were responsible for the fact that many persons, especially freed servants, left both Virginia and Maryland for other colonies, and he suggested that unless the owners were forced to sell some of this unused land at low rates, it could not be “planted in this age or the next.”<sup>15</sup>

One of the objects in retaining such large uncultivated tracts was the natural desire to provide for one's children. In colonial Maryland this desire to accumulate for posterity shows itself as something apart from the desire for per-

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<sup>14</sup> P. A. Bruce, *Institutional History of Virginia in the Seventeenth Century*, vol. ii, p. 576.

<sup>15</sup> This letter is dated March 27, 1697. Nicholson made certain proposals for the settlement of the head of the bay, and added the following proviso: “Provided no one man were allowed to take up above two or three hundred acres at most. Some persons have taken up great quantities of land both in Virginia and Maryland, of whom few or none are able to improve it all, and this is one great reason why young English Colonists and freed servants leave these Colonies and go either Southward or Northward; for they are naturally ambitious to be landlords, not tenants.” In a letter of July 13, 1697, he reiterates these ideas: “Most of them [the members of the legislatures] or their friends and relations hold great tracts of land, and they are fearful that, if they own it [that they are driving away settlers] they would be compelled to part with some of it upon easy terms, which if they do not, I do not see how it is to be planted in this age or the next” (Cal. St. P., Amer. and W. I., 1696-1697, pp. 422, 546). Remember also the lines in *Sotweed Redivivus*, written in 1730:—

“But one Man to monopolize  
More Land, than yet he occupies,” etc.



sonal riches, because the engrossing of land for the next generation usually meant a direct sacrifice by the present; it meant an outlay for first cost and a continual drain for quit-rents on land which lay idle and produced no returns.<sup>16</sup> Not only were separate tracts left to different children, but also a single tract was very frequently divided between several heirs. In a country where the agricultural unit is fairly well determined, as is the case in Maryland today, it is very rare that a farm is divided among children; but when the size of the unit is fluctuating, or when the devisor holds land which is not being tilled, it is no shock to agricultural custom to parcel out a tract among several heirs. The wills and the rent-rolls<sup>17</sup> show very many cases in which such a division of tracts has taken place.<sup>18</sup> In fact, this process went on to such an extent that it was an important element in reducing the old unwieldy estates into farms which more nearly approached the economic unit of highest efficiency.

The influence of the quit-rent on these forms of land speculation is evident. The less a man must pay each year as expenses on undeveloped land, the greater amount will he take up and hold for an increased value or to transmit to his children. Without a quit-rent, a purchase price, or some form of restriction on the amount of land to be held by a single individual, the development of the country would have been almost impossible, for the soil undoubtedly would have been monopolized by a few speculators, to the exclusion of the ordinary settler. Under the existing conditions, however, only so much land was secured as the patentee felt able to carry; and only a small burden of this sort was

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<sup>16</sup> Dulany wrote in 1764: "They who have children to provide for keep their Land with that view. it is a kind of property less slippery, than money is, in the Hands of Young or Improvident People" (Calvert Papers, No. 2, p. 242).

<sup>17</sup> Hugh Jones, writing about 1721, said, "Since the Number of Inhabitants encreases so prodigiously; and the *Tracts* being divided every Age among several Children (not unlike *Gavel Kind* in *Kent* and *Urchinfield*) into smaller Plantations; they at Length must be reduced to a Necessity of making the most of, and valuing a little, which is now almost set at Nought" (p. 61).

<sup>18</sup> The rent-rolls show a great number of tracts held in several equal parcels by persons of the same name as the original patentee.



sufficient to make a vast difference in the quantities taken up. Thus a Virginian under the two shilling rent payable in tobacco could afford to carry more than twice as much speculative land as a Marylander under the four shilling rent payable in specie.<sup>19</sup> It was here, perhaps, that the quit-rents and other land liabilities had their most beneficial and important results.

The system of leasing made possible the securing of more land than would otherwise have been the case. At all times the renter comes only from the class of men who are unable to get land of their own;<sup>20</sup> and it may be safely inferred that the more difficult land is to procure the larger and the more dependable will be the renting class. It is apparent, therefore, that as the vacant lands became exhausted and those under patent increased in value, leasing and farming would become more and more popular. In the older counties vacant land was becoming exhausted during the third and fourth decades of the eighteenth century, and the frontier was being pushed back beyond the head of navigation on many of the rivers.<sup>21</sup> By 1754, except in Frederick County, there was not a single tract of desirable vacant land large enough to be erected into a manor.<sup>22</sup> It is during this period, therefore, that leasing seems first to have become important. Though some leases appear in the last quarter of the seventeenth century,<sup>23</sup> Hugh Jones, writing in 1721, said that the system was "not very common, most having Land of their own."<sup>24</sup> Very few leases are recorded pre-

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<sup>19</sup> In comparison with Virginia it must be remembered that the rents were very frequently avoided there, especially on large tracts. This was not the case in Maryland.

<sup>20</sup> Governor Nicholson in the letter quoted on page 65 testifies to the natural aversion to being tenants.

<sup>21</sup> Both warrant books and rent-rolls show that land grants almost cease in the older counties about this time.

<sup>22</sup> Archives, vol. vi, p. 52.

<sup>23</sup> In 1684 the land council was instructed to renew leases on the proprietary manors (Archives, vol. xvii, p. 259).

<sup>24</sup> "Sometimes whole Plantations are sold, and at other Times small Habitations and Lands are let; but this is not very common, most having Land of their own; and they that have not may make more Profit by turning Overseers, or else by some other better Ways, than by *Farming*" (p. 61).

vious to 1720, but after that date they became increasingly numerous.<sup>25</sup> It is between 1720 and 1750 that we find both the proprietary and the private manors being let out in numerous leaseholds. Thus, though leasing sprang up so gradually that it is difficult to set a date for its beginning, we may say that, in all probability, it began to expand to important dimensions between the years 1720 and 1735.

The terms of leases varied considerably. There was a gradation from the overseer, who for a share in the crop superintended a gang of hands, to the lessor who held his land for a period of more than fifty years and paid a fixed annual rent.<sup>26</sup> Those renters who approached the status of overseers held for only short periods, frequently from year to year,<sup>27</sup> and often with no written instrument.<sup>28</sup> Formal leases, however, tended toward much longer periods. Five, seven, fourteen, and twenty-one years were favorite periods, the last, perhaps, being the most common. A very popular long tenure, especially on large estates, was for a life or lives, usually for three lives.<sup>29</sup> The prevalence of these long periods was due to two reasons: First, the lessor, who often dealt with numerous tenants, desired relief, as far as possible, from the trouble of changing them; and second, the lessee, who often had to develop tracts of new ground, desired a term sufficiently long to obtain recompense for the improvements put upon another's land.

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<sup>25</sup> Too much must not be inferred from this, as the enactment in 1715 of a law requiring that certain leases be recorded may account for the difference. However, the change was not sudden, but was by a gradual growth.

<sup>26</sup> Richard Bennett, who lived in Queen Anne County, had overseers in Kent, Cecil, Talbot, and Dorchester counties, Maryland, and even in Accomac, Virginia. Overseers at such distances, of necessity, had all the freedom and responsibility of tenants (Land Office, Wills, Liber DD No. 7, p. 466).

<sup>27</sup> Baltimore, Court Records, 1731, Liber HS No. 7, p. 249.

<sup>28</sup> Suits for rent in which no lease is referred to are a strong indication that none existed. Bills for part of a year's rent—for example, "To 1 mo. 20 days rent of sd. plantation....142 lbs."—would also be very improbable under a written instrument. See Somerset County, Court Records, 1748, Liber P, p. 107; Charles County, Court Records, 1722, Liber N No. 2, p. 79.

<sup>29</sup> That is, three persons were named, usually three members of the lessee's family, and the lease continued as long as any of these survived.

The rates at which land was rented varied almost as much as the periods. Rates are found as low as ten shillings a year per hundred acres, and as high as £10. Such a matter naturally depended upon the quality, location, and improvements of the land, the bargaining power of the parties, and the date at which the bargain was made. As would be supposed, land rents gradually increased as the century advanced. Hugh Jones, writing about 1721, stated that servants when freed may "rent a small Plantation for a Trifle almost;"<sup>80</sup> he could hardly have said this of the £5 and £10 rents of the later period. The steady advance of rents on the proprietary manors is another indication of the general advance of rents throughout the province.<sup>81</sup> Though under such circumstances a generalization as to the renting value of land must be very dangerous, it may be said that about 1750 a plantation of medium size and desirability (from one hundred and fifty to two hundred acres) might be rented for from six hundred to a thousand pounds of tobacco, or from £5 to £8 currency per year.

In the early part of the eighteenth century the rent was almost invariably expressed in tobacco or some other agricultural product; but as the century advanced, and with the general change from tobacco currency to coin, money rents became more and more numerous. Frequently there were stipulations in the leases by which the lessee undertook to make certain improvements as a part of the rent. Setting out and maintaining orchards was the most frequent provision of this character; nearly all leases of land from the proprietor bore such a clause, and it was imitated by many private lessors. Other requirements of the same nature were the erection of houses and fences. These provisions were at times considered as part of the bargain over and above the stipulated rent, and at other times as a substitute for rent during one or more years. When unimproved land was rented, there was often a clause suspending payment

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<sup>80</sup> P. 54. As Jones himself tells us, such statements apply as well to Maryland as to Virginia.

<sup>81</sup> See page 93.

of rent for the first two years to repay the tenant for the labor of improvement.<sup>32</sup>

A great hindrance to the leasing of land was the waste of which tenants were often guilty. Under the extensive system of farming, especially of tobacco, the first few crops from new ground were by far the heaviest; and after they were off, the soil was left of little value for agriculture until it had gone through a period of years in fallow. Governor Sharpe wrote that the tenants on the proprietary manors during the last few years of their terms put in such quantities of tobacco that they left the land impoverished and untenable. He proposed that a clause be put into the leases limiting the number of acres that might be planted in tobacco during the last three years.<sup>33</sup> In the case of orphans' lands,<sup>34</sup> which were under control of the guardians, the viewers almost invariably limited the amount of land that might be cleared for cultivation. Waste of timber was another grievance that lessors charged against lessees. When not legally prevented, tenants often cut out all the timber fit for clapboards, staves, shingles, or rails, and left the land without sufficient wood to maintain buildings and fences. The viewers of orphans' lands usually specified also that only so much timber of this sort might be felled as was needed to maintain the plantation. Secretary Calvert complained in 1754 that impoverishment of the soil and waste of timber by former tenants were occasioning the proprietary lands to go untenanted.<sup>35</sup>

With regard to the low rents and the waste by tenants, Daniel Dulany wrote in 1764: "Every Gentleman who lets out Land in this Country, knows, how difficult it is, with

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<sup>32</sup> In this discussion it is thought unnecessary to give specific references, as the land books of any county will reveal instances of each of these provisions.

<sup>33</sup> Archives, vol. vi, p. 38.

<sup>34</sup> On the death of a landholder leaving minor children three appraisers visited his land and made out an inventory showing the land and its improvements, and fixed a valuation on the rent to which the guardian should be held. This was recorded to serve as evidence should the orphan, on coming of age, sue for waste.

<sup>35</sup> Calvert Papers, No. 2, p. 180.

the utmost Care, to make any considerable profit by that scheme, & how impracticable it is to get an annual Rent equal to half the Interest w<sup>ch</sup> wou'd arise from the money, for which the Land wou'd sell, or to prevent the Abuses of Tenants in the Commission of waste."<sup>86</sup> From one point of view Dulany was probably right. Land at this time was worth about £1 per acre, and a hundred-acre plantation would scarcely bring more than £5 or £6 per year rent. This is but five or six per cent. on the investment, even allowing no depreciation for waste. The profit from leasing lands, however, arose partly from the steady increase which was taking place in the value of land, and partly from the practice of securing woodland at low rates and increasing its value by bringing it into cultivation. Governor Sharpe wrote in 1765 that gentlemen in Maryland were then purchasing land with no other view than to lease it out when patent land was no longer to be obtained.<sup>87</sup>

That leasing of land was in some way profitable is abundantly proved by the amount of property thus cultivated. Great numbers of persons who held more land than they could occupy rented out a corner to some one who was willing to carve a plantation out of the forest for a couple of years free of rent. Sometimes the tract was sufficient to accommodate several plantations besides that of the owner. In this way sufficient income would be secured to pay at least the quit-rents, and thus enable the owner to retain the land until its value increased, or until it became desirable to set up his children as planters. Wills and valuations of orphans' lands show hundreds of estates on which the owner lived with one or more tenants grouped around him.<sup>88</sup> But not

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<sup>86</sup> Calvert Papers, No. 2, p. 242.

<sup>87</sup> Archives, vol. xiv, p. 204.

<sup>88</sup> The following is a typical report: We find "there is on the afs<sup>d</sup>. tract called Wartons Adventure, three separte Settlements Vizt. the late dwelling place where the dece<sup>d</sup>. Wm. Warton last lived, one other Settlement called Bat Burks, the other called Thos. Cooks" (Queen Anne, Land Records, JK No. B, p. 180). In the Gazette of January 22, 1756, Anne Beale advertised for rent a part of the plantation whereon she then lived. Other such cases are numerous.

all the land was of land contiguous to the owner's plantation. The greater landholders owned and rented lands in parcels scattered throughout a county or even in several counties. Surveying, improving, and renting out lands in this way became one of the greatest fields for investment in the colony.<sup>39</sup>

Resembling somewhat the system of developing land by leasing was the system of working it by means of overseers. Although overseers' contracts are, naturally, less abundant than leases, enough of them have come down to us to show what the system was. The period of these contracts is usually for but a single year or, as it is generally expressed, for a single crop. In some cases, however, they were for as long as four or five years.<sup>40</sup> The remuneration took several forms. At times the overseer was paid a fixed salary varying from £10 to £30 per year.<sup>41</sup> In a large majority of instances, however, the overseer was paid a share in the crop; this was the customary method of payment. The share of the overseer varied according to the number of slaves to be worked, the rule being in many cases to divide the crop into as many shares as there were hands on the place including the overseer, of which shares one went to the overseer and the remainder to the owner. By this plan the overseer gained nothing from an increase in the number of slaves put in his charge; the contracts, therefore, always specified or limited this number.

Special provisions concerning various minor matters were often put into the contracts. The overseer was sometimes permitted to cultivate for himself—presumably with the aid of the servants or slaves in his charge—patches of corn or wheat.<sup>42</sup> Keeping driving-horses, milch-cows, or a number

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<sup>39</sup> All the great landholders took part in this business. Charles Carroll writes that he spent much money on the lands of his nephew in developing them and preparing them for tenants (Johns Hopkins University Papers, box 38, in Maryland Historical Society).

<sup>40</sup> See Baltimore County, Court Records, 1724/5, JS No. TW4, p. 147.

<sup>41</sup> These limits are almost guesses, but the few cases I have seen come within them.

<sup>42</sup> Baltimore County, Court Records, 1722, JS No. TWZ, p. 195.

of hogs or sheep was also at times agreed on.<sup>43</sup> There was generally a provision concerning the maintenance of the overseer, and sometimes that of the slaves. When the overseer was to live on the dwelling plantation of the owner, he was sometimes furnished with lodging, board, washing, and mending;<sup>44</sup> when he was to live on a separate plantation, he was occasionally required to maintain himself,<sup>45</sup> but usually he was supplied with provisions. A Baltimore County contract calls for a year's supplies as follows: three hundred pounds of pork, one hundred pounds of beef, one and a half bushels of salt, and six barrels of Indian corn.<sup>46</sup> Though the maintenance of the slaves was sometimes mentioned, it was always borne by the owner.

The duties of the overseer were mainly, of course, to take entire charge of the cultivation of the plantation. The crops to be raised were agreed on by the owner and the overseer and were often mentioned in the contract; thereafter it was the overseer's duty to see that they were properly put in and attended to. But the overseer often had to do more than that. The custom of building with green lumber and of using no paint made structures very short-lived and kept construction work almost always going on. Not a little of the overseer's duty was, therefore, to superintend and aid in the erection of buildings and fences. A number of overseers' contracts specify minutely what work of this sort shall be done. Occasionally other duties are required. In one case the overseer's wife was "to milk, wash, dress the victuals for the family, mend and make for the slaves, to live peaceably and quietly with the family, and not to meddle with any affair."<sup>47</sup>

Although at times such menial services as these might be part of an overseer's duty, and although at other times the

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<sup>43</sup> Kent County, Court Records, 1764, DD No. 4, p. 247.

<sup>44</sup> Baltimore County, Court Records, 1724/5, JS No. TW4, p. 147; 1720, JS No. C, p. 479.

<sup>45</sup> Kent County, Court Records, 1764, DD No. 4, p. 247.

<sup>46</sup> Court Records, 1722, JS No. TW2, p. 195; Kent County, Court Records, JS No. 37, p. 329.

<sup>47</sup> Baltimore County, Court Records, 1722, JS No. TW2, p. 195.



office might even be so debased as to be filled by one of the more trustworthy slaves, yet in most cases the overseer was far from being a menial or even a laborer. So sharply were the duties of an overseer distinguished from those of a laborer that there are cases in which additional pay was claimed for laboring work done during the time of overseership.<sup>48</sup> In fact, overseers came from the best of the landless class, perhaps even better than that of the free tenants.<sup>49</sup> A landlord was not apt to place slaves, implements, and land to the value of several hundred pounds in charge of any but competent and reliable men. When the quarter was at a great distance from the owner's dwelling plantation, the overseer filled an especially responsible position. He was then not only answerable for the management of the plantation, but he was also in a way the owner's personal representative, and even looked after such legal matters as touched the number of taxables, the road levy, and perhaps the poll-tax.<sup>50</sup> Overseers, therefore, seem in many cases to have been respected members of the community, and members of the owner's own family are often found acting in this capacity.<sup>51</sup>

The responsibility of the overseer's position depended somewhat upon the number of slaves or servants placed in his charge. This number varied, of course, with the financial ability of the owner. It was not unusual to have an overseer with but one, two, or three slaves; and, on the other hand, the number of slaves under an overseer sometimes ran as high as fifteen or twenty. The average in Charles

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<sup>48</sup> Kent County, Court Records, 1764, DD No. 4, p. 115.

<sup>49</sup> Notice the proviso in the statement of Hugh Jones: Servants when freed "may work Day-Labour, or else rent a small Plantation for a Trifle almost; or else turn Overseers, if they are expert, and industrious" (p. 54).

<sup>50</sup> On petition of William Mattingly, overseer for Samuel Hyde, of England, four slaves were exempted from taxation (Baltimore County, Court Records, 1734, JWS No. 9, p. 356).

<sup>51</sup> G. Harris was overseer on B. Harris's quarter, and Phil. Dowell, jr., on Phil Dowell's quarter, according to the Calvert County tax list of 1733 (Maryland Historical Society, MSS. file, 122). Richard Bennett willed several plantations to the overseers who were living on them (Land Office, Wills, DD No. 7, p. 466).



County in 1733 was about three taxables,<sup>52</sup> besides the overseer, on each quarter. In Calvert County, which was somewhat more developed than Charles, the average was at the same time nearly six taxables to a quarter.<sup>53</sup> As Calvert County seems to have been the most advanced section of the colony, it is very probable that in other counties the proportion of slaves to overseers approached that of Charles County more nearly than it did that of Calvert.

Working land by the overseer system seems to have been more profitable than renting it to tenants. The cheap slave labor produced so large a surplus of wealth that the landlord and the overseer could divide the profits and each have more than he would have had if the land had been rented at a fixed sum and worked entirely by the tenant himself.<sup>54</sup> Under this management the owner could also prevent waste of timber and impoverishment of the soil. On the other hand, the owner's share of the crops was not always forthcoming, and the large landholders may have lost much by the delinquency of tenants.<sup>55</sup> Moreover, the more shiftless among the overseers were always backward in preparing their tobacco for shipment, so that the Lower House urged the difficulty experienced by planters in getting this part of their crop ready as a sufficient reason for not limiting more narrowly the time for shipment.<sup>56</sup>

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<sup>52</sup> All persons over sixteen years of age except free white women were taxables.

<sup>53</sup> These figures are taken from the lists of taxables, which are arranged by households and which carefully distinguished quarters from dwelling plantations (Maryland Historical Society, MSS. file, 122, 123).

<sup>54</sup> Jones wrote about 1721: "They that have not [land] may make more Profit by turning Overseers, or by some other better Ways, than by *Farming*" (p. 61).

<sup>55</sup> "Item, whereas several of my Overseers stand largely indebted on my Books and I have had part of their shares of the Cropps made on my Plantations and the accounts of the said Cropps not settled," etc., their debts were discharged (Will of Richard Bennett, in Land Office, Wills, DD No. 7, p. 473).

<sup>56</sup> "The Business of Farming and Planting are very much intermixed in most Parts of the Province, which a good deal retards the Planter in preparing his Tobacco for Inspection, and we think, in a general way, renders it impracticable to do it by the last of June, consistent with the Farming Part of his affairs" (Lower

The amount of land that could be worked by overseers was limited only by the amount of capital necessary to secure slaves and implements. All the great landholders and wealthy men had numerous and sometimes widely scattered plantations under this system. Richard Bennett in 1749 had some twelve or fifteen plantations, with slaves and overseers, scattered from Cecil County on the north to Accomac in Virginia on the south. Daniel Dulany, though a resident of Annapolis, maintained at least one plantation with servants on Wye River.<sup>57</sup> In fact, the regular way of increasing the scale of cultivation was not so much by enlarging the size of the plantation as by establishing separate plantations under overseers, often at great distances from the owner's dwelling.<sup>58</sup>

The acreage of these outlying quarters cannot be discussed apart from the question of the acreage of plantations in general. This question is one of considerable complexity because the colonists had no clear idea of the agricultural unit which we now call a plantation or farm, that is, a cultivated tract under a single management, with, perhaps, sufficient woodland to supply timber for all necessary purposes, and clearly set apart from all other similar units. In the colonial period, especially in the earlier part, plantations were usually clearings in the midst of great forests, and had no fixed bounds other than the surrounding woodland. Under these conditions the term "plantation" came to be applied to only the clearing. Consequently we find many expressions like the following, "a tract of two hundred acres on the southern end of which is seated a plantation of about forty acres." Lacking the idea of a plantation as well as the thing, those who made out colonial documents naturally gave very few figures for such a unit.

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House Journal, October 25, 1763). By the word "farming" in this passage the house undoubtedly means all working of land on shares, which will include most overseerships and perhaps some leases.

<sup>57</sup> Advertisement for a runaway servant (Maryland Gazette, September 16, 1746).

<sup>58</sup> For numerous instances, see any volume of wills or inventories or any list of taxables. These separate plantations are designated as "quarters."

In examining this subject, therefore, it may be well to consider first the total amount of land held by each individual, and to note after that the amount in each plantation. Fortunately, individual holdings for the several counties are fully and accurately given in the debt books.<sup>59</sup> From these books it appears that, at the middle of the eighteenth century, the average amount of land held by an individual in a single county varied from about 250 to 475 acres. In the frontier counties, such as Cecil and Frederick, the average ran high, being 341.9 and 370.1 acres respectively. In Kent, St. Mary's, and Worcester, however, counties which had long been settled, the average was 279.6, 282, and 255.3 acres respectively. On the other hand, the nearer a county lay to Annapolis—the center of government and, consequently, of the aristocratic class—the larger were the holdings. In Anne Arundel the average was 472.8, in Calvert 364.1, and in Talbot<sup>60</sup> 329.5.<sup>61</sup>

Since many owners had lands scattered in various parts of the counties and worked in several plantations, it is evident that the average amount of land in each plantation

<sup>59</sup> The series of debt books begins at the expiration of the quit-rent agreement in 1733 and runs to the Revolution. In them is given the name of each landholder in the county, with the tracts and parts of tracts held, their acreage, and their quit-rent. Because of the confusion into which the organization for collecting the quit-rents fell during the period of the commutation, the debt books between 1733 and 1740 are very inaccurate; after 1740, however, their errors are too slight to have any importance in the above calculation.

<sup>60</sup> Talbot County was in close touch with Annapolis by water.

<sup>61</sup> The following table will show these figures more clearly:—

County	Year	Acreage of all patented land	Number of landholders	Average holding
Cecil.....	1749	131,512	348	371.9
Kent.....	1760	177,318	634	279.6
Talbot.....	1756	206,935	628	329.5
Somerset.....	1755	288,817	938	307.9
Worcester.....	1755	307,195	1203	255.3
Frederick.....	1752	382,237	1032	370.1
Anne Arundel.....	1755	351,135	730	472.8
Calvert.....	1755	113,590	312	364.1
Charles.....	1755	237,428	692	343.1
St. Mary's.....	1754	162,006	567	282

must be very much smaller than the average holding. This unit is the one now generally meant by the words plantation and farm, a unit which, as has been said, was not very definitely defined in the colonial period. The nearest to such a unit that can be found in the records is the tenement. The average size of the tenements on Kent Manor in 1766 was about 125 acres.<sup>62</sup> Eleven leases on the Carroll estates recorded in Baltimore County between 1739 and 1758 average about 118 acres, and 85 leases by Thomas Brerewood recorded between 1740 and 1746 average 106 acres.<sup>63</sup> One hundred acres was such a favorite size for leases that nearly one fourth of all that are recorded are for that amount. In general, the average size of leaseholds ran between 100 and 150 acres.

But leases, it may be assumed, were generally for smaller tracts than were worked by the landowners themselves. Some hints concerning the size of the plantations of the landholding class can be had from the appraisements of orphans' estates, some of which give the acreage. The dwelling plantations in forty-two appraisements of lands in Cecil, Kent, Queen Anne, Somerset, Baltimore, and Charles counties show an average of about 183 acres. The advertisements of land for sale which appeared in the *Maryland Gazette* run somewhat larger than this; but here we would expect to find an undue proportion of the large tracts of speculative lands. Eighteen plantations of which the size has been found from various accidental sources show an average of 202 acres. These figures agree sufficiently well both with each other and with the probabilities of the case when compared with the size of the holding on the one side and the size of the tenement on the other to lead us to conclude that the average plantation of the middle-class landholder was somewhere between 150 and 200 acres.

Above the average landholder was the body of landed aristocracy, who drew their wealth and prestige from their

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<sup>62</sup> Johns Hopkins University Papers, box 3, and bundle 51-2.

<sup>63</sup> Baltimore County, Land Records, Index.

enormous estates. These properties in the colonial period consisted, for the most part, of many scattered tracts, both leased out and worked under overseers, rather than of single large plantations surrounding the owner's residence and cultivated under his own eye. The dwelling plantations of some of the more important landholders, however, were very large. Talbot County was the home of a great many of the aristocratic families, and here we should find many of the largest plantations. The assessment of 1783 seems to have been made in Talbot with greater regard to the plantation than is shown by previous land records.<sup>64</sup> Of the sixty-seven plantations in this assessment with as much as 200 acres of cleared land the average size of the total plantation was about 615 acres. One, owned by Richard Bennett Lloyd, contained as much as 3230 acres. This, however, was exceptional, as the next largest was but 1468 acres. Four others were larger than 1000 acres, and another above 900 acres. The median of the sixty-seven fell between 462 and 463 acres. These figures must, however, be taken with much caution. In the first place, they come from a time—1783—much later than that under consideration, and in the second place, the assessors seem in many cases to have thrown together all of a contiguous tract regardless as to whether it was all cultivated by one man or whether it was rented out in several tenements. It is almost certain that some of the tracts under consideration should be broken up in this way. Allowing, therefore, for this error, we may safely conclude that the average of the sixty largest plantations in Talbot County was about 600 acres. It is probable that in no other part of the province—except, perhaps, in Anne Arundel County—was there such an abundance of large farms.

More important than the size of the plantation, in the modern sense of the word, is the size of the clearing. In forty-one appraisements of orphans' estates between the

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<sup>64</sup> These returns are in the Scharf Papers, box 84, in Maryland Historical Society.

years 1731 and 1765 which happen to show the size of the clearings the range of the cleared land is between 9 acres and 325 acres and the average is 67.5 acres. In eighteen advertisements in the Maryland Gazette the plantations range between 7 acres and 250 acres of cleared land and average 82.6 acres. The colonial idea of the proper amount of cleared land for a plantation is shown by the fact that when the appraisers of orphans' estates permitted the guardian to develop a plantation out of a tract of woodland belonging to the orphan, they regularly limited the amount of land that might be cleared to between 30 and 50 acres.<sup>65</sup> From the assessments of 1783 we get averages somewhat larger than those from advertisements and appraisements. The three assessment districts into which Talbot County was divided gave average clearings of 90.2, 97.2, and 130.4 acres. As this assessment was made about thirty years later than the mean date of the orphans' appraisements, it is natural that the clearings should run a little larger; in general, the assessment supports remarkably well the averages drawn from the more limited body of figures.

In the case of the clearing, as in that of the total size of the plantations, we must consider tracts which were above the average size. Of the 713 plantations assessed in Talbot County in 1783, 67 had as much as 200 acres of arable land. The average of these sixty-seven clearings was 322.4 acres, and the median fell at 250 acres. The largest three were 1450, 750, and 700 acres. These figures very likely err by being too large,<sup>66</sup> and must be considered as the extreme

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<sup>65</sup> Such appraisements may be found in the following records: Cecil County, Land Records, 1735, WK No. 2, p. 110; Kent County, Court Records, JS No. 18, pp. 64, 144; Queen Anne County, Land Records, RT No. C, p. 248; Charles County, vol. xlii, p. 611. One of the purposes of the appraisers was to protect the orphans' woods from waste by the guardian, so that in such a case they would naturally make the size of the clearing rather small.

<sup>66</sup> In compiling these figures several tracts credited with more than two hundred acres of cleared land have been rejected because the remarks show plainly that they were leased out in several parcels. Seventeen tracts have been discarded because the owner had no slaves. Though this fact does not necessarily prove that the land was leased in more than one parcel, the chances are very

limits of plantations in Talbot County. Except Anne Arundel no other county was the seat of so many wealthy landholders as Talbot; in other counties, therefore, the cultivated areas ran somewhat smaller and about 1760 probably seldom exceeded 300 acres.

Since it has been shown that the plantations were generally not above 200 acres and that the total holding of each individual ran as high as 250 to 375 acres, the question arises as to what form was assumed by the surplus holding. It is in order, therefore, to examine the various forms in which the landlords held their estates.

Perhaps nearly one fourth of all the land in the older counties was held in parcels of from 50 acres to 250 acres by men who owned no other land, and who either by their own labor or by that of a few slaves cultivated all their clearing. Many other men, who owned tracts somewhat larger, rented out one or more plantations grouped about their own. Numerous valuations of orphans' estates distinguish clearly a dwelling plantation and on the same tract sometimes one, sometimes two, and sometimes four or five tenements.<sup>67</sup> It was a common practice for men who owned larger tracts than they themselves could work to let out parcels of it in this way.

It must not be supposed, however, that the large landowners, or even those of medium importance, held all or most of their land in one parcel. This was the desideratum,<sup>68</sup> and most owners held lands all within a more or less circumscribed neighborhood; but many held land in two or

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great that such was the case, and it will approximate the truth much nearer to reject them than to retain them. In a number of other cases the slaves were far too few to work a plantation of the size indicated, but since it is impossible to distinguish them exactly, these tracts have been retained. There is little doubt that many of these sixty-seven tracts were in reality several plantations.

<sup>67</sup> Queen Anne County, Land Records, RT No. A, p. 16; Charles County, Court Records, J No. 3, p. 384.

<sup>68</sup> Daniel Carroll by will in 1734 authorized Charles Carroll to sell all his lands which did not in one tract exceed five hundred acres (Narration to deed in Land Office, Land Records, Liber DD No. 3, p. 345). This, however, was possible only to a few who had been able to secure large tracts and hold them.



more counties, and some few had plantations scattered well over the province. Daniel Dulany possessed one of the largest and most scattered estates. As early as 1729 he advertised for rent lands in Baltimore, Prince George, and Kent counties;<sup>69</sup> and his later activities extended into Frederick, Talbot, Queen Anne, and other counties. The Carroll family held land in almost every county of the Western Shore;<sup>70</sup> Charles Carroll, father of one of the Signers, though centering his activities about what is now Howard County, also held land in Baltimore, Frederick, Talbot, and perhaps several other counties.<sup>71</sup> Men of smaller means, such as Philip Key, owned land in Frederick, Charles, and St. Mary's counties, and Edward and Caleb Dorsey had possessions in Frederick, Baltimore, and Anne Arundel.

The line between the two shores was somewhat sharply drawn; few owned land on both sides of the bay. On the Eastern Shore, however, conditions were about the same as on the Western. Richard Bennett was, possibly, before the middle of the century the greatest landowner in Maryland. His will,<sup>72</sup> made in 1749, shows him in possession of over thirty plantations scattered from Accomac in Virginia to Cecil in Maryland. After the middle of the century the greatest landowner on the Eastern Shore was Edward Lloyd. The debt books between 1760 and 1766 show that he owned 360 acres in Cecil, 5216 acres in Kent, 5859 acres in Queen Anne, 12,390 acres in Talbot, and 12,467 acres in Dorchester. Within the counties, moreover, the lands were not contiguous, but were scattered in parcels. Most large estates of the period were acquired by purchasing or patenting forest land, and developing it into plantations either by means of overseers or by leasing it to tenants. Vacant lands

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<sup>69</sup> Maryland Gazette, April 8, 1729.

<sup>70</sup> See the debt books of the various counties.

<sup>71</sup> The multitude of Charles Carrolls makes it impossible to be certain always which Carroll the debt books mean. See Johns Hopkins University Papers, box 38, for Carroll's own statement that he spent much money on the lands of his nephew in developing them and preparing them for tenants.

<sup>72</sup> Land Office, Wills, DD No. 7, p. 466.



were to be had only in small parcels, and their development, consequently, led to the building up of such divided estates as those of Dulany and Bennett.

This method of developing lands depended on the securing of tenants and overseers, and therefore it did not become a very important movement until the early part of the eighteenth century, when the passing of the frontier in the older counties was making it difficult to secure vacant land and was forcing the landless to accept leases. Between 1720 and 1730 the method first becomes noticeable. It was then that Richard Bennett was accumulating his estate, and between about 1720 and 1750 Daniel Dulany amassed his wealth in land. Charles Carroll testified that in 1734 the vast tracts of Doughoregan, Ely O'Carroll, Chermalira, Litterlona, and others did not pay one pound of rent; but that through careful management he had by 1764 built up a vast roll of nearly fifty thousand pounds of tobacco per year.<sup>73</sup> It was by vigorously pushing this method of land development at the period when renting first became possible that many of the early Maryland fortunes were amassed.

The great problem in the management of large landed estates was the procuring of tenants. Advertisements of land for rent were frequently inserted in the Gazette; sometimes only a single plantation was offered at once; and sometimes large tracts were offered to be leased in parcels.<sup>74</sup> But the landlords did not stop with bringing their land to the attention of the provincial public; they also advertised in other colonies and abroad. Charles Carroll, in defending a charge which he had made against his nephew for trouble in procuring tenants on the nephew's land, said: "Consider that to procure these Tenants I have solicited & Employ'd many people, that I have paid Several Sums out of my Pocket to persons who procured Tenants in particular to Mr. Franklin<sup>75</sup> I think about £7. Consider the many letters

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<sup>73</sup> Papers relating to the case of Carroll v. Carroll, Hill, and Waring (Johns Hopkins University Papers, box 38).

<sup>74</sup> April 1, 8, 1729; June 24, September 30, 1746; March 10, 1747; October 19, 1748.

<sup>75</sup> Doubtless Benjamin Franklin, who had a wide correspondence in Maryland.

I have wrote on the occasion not only to people in this Province, but to Ireland & Germany with conditions on which I would Rent Lands."<sup>76</sup> Daniel Dulany sent to the proprietor a copy of a letter, written by Germans and urging their countrymen to come to Maryland, which was, doubtless, written and sent at Dulany's instigation and expense.<sup>77</sup> Only the owners of the very largest estates, of course, resorted to such energetic methods.

Besides the cost of the land and the expense of procuring tenants, a considerable outlay was also necessary for the erection of buildings to make the land tenantable. Charles Carroll charged his nephew as much as 2620 pounds of tobacco (equivalent to about £15 or £20) per tenement for the erection of dwellings and tobacco houses.<sup>78</sup> It would have cost but little less to allow the tenants two years rent free to provide buildings for themselves, for in that case the buildings erected might have been much less substantial. It required, therefore, a great deal of capital to develop a tract by tenanting. It may have been, as Daniel Dulany said, that the rents paid no great interest on the total value of the tract when developed.<sup>79</sup> The profit of the business lay in the great increase made in the value of land by its rescue from the wilderness. To some extent, therefore, developing land was a speculative business in which the capital invested had to stand for a long period before the profit was reaped. One effect of the necessity for capital in conducting these operations was that it limited development on a large scale to those who already had wealth or who had from other sources an income which was seeking investment. We find, consequently, that most of the very great landowners were either merchants or public officials who invested in land the money gained in these other occupations. Richard Bennett, for instance, conducted a large mercantile

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<sup>76</sup> Papers in Carroll v. Carroll, Hill, and Waring (Johns Hopkins University Papers, box 38).

<sup>77</sup> Calvert Papers, MS., No. 295½.

<sup>78</sup> Johns Hopkins University Papers, box 38.

<sup>79</sup> See p. 99, n. 41.

business in Queen Anne County; Edward Lloyd was agent or receiver-general; Charles Carroll had his start from his father, who attended to the proprietor's affairs in Maryland during the period of the royal government; and Philip Key was sheriff of St. Mary's County, member of the Lower House, and finally councillor.

The conditions under which land had to be procured gave rise to some of the characteristics of land development. In older counties, where the land had for the most part been patented long before it became possible to tenant it, few of the large grants survived undivided to the time when it was possible to bring them into cultivation. Some persons tried to increase the size of their tracts by securing the adjoining lands.<sup>80</sup> In general the older counties show very few tracts as large as a thousand or fifteen hundred acres. In the newer counties, however, there were more large tracts. Wherever it became possible to secure tenants in a region where there was at the time or had recently been large parcels of vacant land, the tracts were less divided, and were, consequently, larger. At an early period Augustine Hermann took up a large tract known as Bohemia Manor in Cecil County, and rented out much of it to Germans whom he brought over from the Delaware. The rapid settlement of the rich lands in the forks of the Patuxent and on Elk Ridge, combined with Charles Carroll's industry and ability in procuring tenants not only from all over Maryland but even from Europe, made it possible for him to develop in that region tracts, or manors, of from five to ten thousand acres each. Thomas Brerewood, who through relationship to the proprietor came into possession in 1731 of a tract of ten thousand acres in Baltimore County, developed the land into a thickly settled estate.<sup>81</sup>

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<sup>80</sup> The estate of William Cummings, for instance, consisted of the following lands: part of Broad Creek, 50 acres; Slades Addition, 50 acres; Forfatt, 30 acres; Justice Come at Last, 150 acres; Mill Town, 46 acres; and Wolf Neck, 100 acres, all contiguous on the northern side of the Severn; and Hazard, 60 acres; Hood's Hall, 100 acres; part of Ben's Luck, 25 acres; and part of Freeborn's Progress, 135 acres, all contiguous on Elk Ridge (Maryland Gazette, July 9, 1752).

<sup>81</sup> Baltimore County, Land Records, Index.

The only part of the province in which tenants could be obtained before the frontier had receded was what is now Frederick and Washington counties. In all other sections patenting of land ran ahead of settlement; but about 1730, while Frederick was still an unbroken forest with practically no land under patent, there suddenly began to pour across the northern border a stream of German immigrants, thoroughly skilled in small farming, without money, without knowledge of the English language, and without the traditions of land ownership and broad acres characteristic of the English-American. Here was an ideal tenantry. Unable to purchase land, not knowing how to patent it, with legal restrictions on their ability to dispose of it, and with no great aversion to becoming tenants, the Germans played directly into the hands of land speculators, who here for the first time found both the land and the tenantry, needing only the speculator's efforts to bring the two together.

Under these conditions there occurred a boom of western land speculation and development comparable to many similar movements of modern times. So rapidly was the country developed that what had been almost all forest in 1730 was erected into a county in 1748, and by 1755 had become the second county in the province in population.<sup>82</sup> The amount of speculative development made possible by this growth is evident. Almost every wealthy man on the Western Shore became interested in Frederick lands. In 1740 John Diggs was granted a warrant for 5000 acres in this county, with the condition that he settle thereon at least ten families.<sup>83</sup> In 1763 he still owned 3374 acres in Frederick County. Some other large owners in Frederick about 1763 were Philip Key, 5333 acres, Edward Diggs, 5505 acres, Richard Snowden, 6588 acres, Edward Dorsey, 9970 acres, and James Brooks, 22,834 acres. Certainly several of these men and possibly all of them resided out-

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<sup>82</sup> The census of 1755 gave Baltimore County a population of 17,238 and Frederick County, 13,970 (Hill Papers, Miscellaneous, in Maryland Historical Society).

<sup>83</sup> Land Office, Warrants, LG No. A, p. 192.

side of Frederick County. Much Frederick land was held on pure speculation without any improvement. William Eddis said of the county in general that the land was to a considerable extent taken up with an eye to the future, and people were content to clear gradually.<sup>84</sup> The tax collector in 1757 reported to a committee of the Lower House that of the 537,500 acres of land patented in Frederick County, 62,042 acres of uncultivated land were owned by people residing in Baltimore, Anne Arundel, Prince George, and Charles counties.<sup>85</sup> We have no estimate of how much cultivated land was held by non-residents.

Development of western land was in character very much like that of land in the older counties. Men secured large tracts and rented them out in parcels of from fifty to one hundred and fifty acres each. In Frederick County, however, the helplessness of the tenants, caused by their poverty, by their ignorance of language and customs, and by the remoteness of their situation, led the landowner in many cases to assume the role of a patron. Two instances of this are particularly interesting.

Daniel Dulany was one of the first as well as one of the largest and most successful land dealers in Frederick County. When he first took up large tracts in this region, it was generally thought that he was on the road to financial ruin,<sup>86</sup> but on his land was formed one of the earliest settlements. This start, combined with the favorable location, soon created on his property the metropolis of the Monocacy Valley. In 1745 Dulany himself laid out a town, which he called Frederick; he also gave land for churches, and seems to have assumed a sort of guardianship over the community.<sup>87</sup>

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<sup>84</sup> Letters from America, p. 129.

<sup>85</sup> Lower House Journal, April 28, 1757.

<sup>86</sup> Eddis, pp. 98, 99.

<sup>87</sup> A letter signed by twenty-five German settlers reads in part: "One of the Principal Gentlemen of this Country (Mr. Dulany) who lives at Annapolis, the Capital of this Province, was so kind as to Assist us w<sup>th</sup> 306 Pistoles & to free us from ye Captain's Power, we are Perswaded that this Gentleman will be Serviceable to Aid and Assist all Germans that will Settle in this Province" (Calvert Papers, MS., No. 295½).

Another place which developed in a manner very similar to Frederick was Hagerstown. Jonathan Hagar, a German immigrant, settled in that region and took up land. Following the lead of Dulany, he built up his settlement, and after the close of the Indian wars laid out a town. Eddis writes: "A German adventurer, whose name is Hagar, purchased a considerable tract of land in this neighborhood, and with much discernment and foresight, determined to give encouragement to traders, and to erect proper habitations for the stowage of goods, for the supply of the adjacent country. His plan succeeded: he has lived to behold a multitude of inhabitants on land which he remembered unoccupied; and he has seen erected in places appropriated by him for that purpose, more than a hundred comfortable edifices, to which the name of Hagar's Town is given, in honour of the intelligent founder."<sup>88</sup>

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<sup>88</sup> Pp. 133-34. See also Sollers, "Jonathan Hagar," in Society for the History of the Germans in Maryland, second annual report.

## CHAPTER IV

### MANORS

Some of the large tracts of rented land both in the back country and in tide-water Maryland—though mostly in the latter—were dignified with the name manor. In the early days of the colony an attempt had been made to introduce the manorial system with its full complement of manorial rights;<sup>1</sup> but perhaps because of the impossibility of obtaining tenants, the system completely failed. When it finally became possible to secure tenants, some of these manors which had continued undivided were leased out, as they were originally intended to be, and the name manor still clung to them.<sup>2</sup> Some few of the later grantees—Charles Carroll, for instance—also called their tracts manors. Though there had never been any formal revocation of the manorial rights granted with the early manors, those rights had long been unused and as good as forgotten, while the later grants never carried any such privileges.

The manors of later times in Maryland, therefore, differed in no way from other large holdings. They were simply a number of tenements grouped together, the tenants of which had no relations with each other and had only the ordinary contractual relations with the landlord. The manor was a unit only in that it was held by virtue of a single patent, bore a single name, and was, in some cases at least, managed as a unit by the owner. Charles Carroll certainly had several stewards<sup>3</sup> to deal with his tenants—

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<sup>1</sup> J. Johnson, "Old Maryland Manors," in Johns Hopkins University Studies, series 1, no. vii.

<sup>2</sup> George Plater in 1729 advertised that a resurvey had revealed many squatters on St. Joseph's Manor, St. Mary's County, and that he was inclined to lease it out in small parcels (Maryland Gazette, April 1, 1729).

<sup>3</sup> These stewards were, perhaps, little more than tobacco receivers such as were employed by most merchants and others who received

perhaps a steward for each of his manors. The rent also on Carroll's manors was made payable at the inspection house of the manor.<sup>4</sup> Since, aside from these slight administrative conveniences, the manors did not differ from any other leased lands, their importance was more spectacular than real. In fact, during the later colonial period the name was the only distinctive feature of such a possession.

The use of the word manor, however, has helped to preserve some of the tracts bearing it from the rapid dismemberment which overtook other lands. When tracts came to be worked in several distinct parcels, it was but natural that they should soon be regarded as mere compounds of those parcels, and on but slight occasion they would break down into their component parts. Throughout the colonial period Maryland was going through this process of dividing up the unwieldy tracts in which a great deal of the land had been patented, and making the units of ownership conform more closely to the economic unit in which it had always been found convenient to cultivate the soil. In many cases, no doubt, the tenants who rented parts of larger tracts ultimately bought their tenements; in other cases divisions among heirs split up large tracts. The number of deeds reading "part of a tract" far exceeds the number of those reading "all that tract." In this process manors, as well as tracts without that title, often went to pieces,<sup>5</sup> but the mere psychological fact of their being thought of as units no doubt prolonged the life of many of them. For sentimental reasons a manor would be kept whole until dire financial difficulties compelled its division. From these causes some

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tobacco in large quantities. They were paid two shillings sixpence sterling for each nine hundred and fifty pounds of tobacco received by them. Carroll tells us that he himself transacted much of the business that we usually associate with the duties of a steward.

<sup>4</sup> Johns Hopkins University Papers, box 38.

<sup>5</sup> In 1755, for instance, Wollaston Manor in Charles County, 1098 acres, was divided by arbitrators into six plantations of 183 acres each and assigned to six different owners (Charles County, Land Records, A No. 3, pt. 2, p. 353).



of the old manors have survived almost intact to the present day.<sup>6</sup>

A prominent example, in some ways typical of private land speculation and development in Maryland, is to be found in the proprietary manors. These lands were manors only in the same sense that large private holdings were entitled to that name. They were tracts withheld by the proprietor from grant by the land office and leased out in parcels like the lands of private owners.

The first proprietor of Maryland, in order to share in the benefits of the increase in land values, inaugurated the policy of reserving certain land for himself; and following the tendency of that day, he erected these lands into manors. In the instructions to Governor Charles Calvert in 1673 it was stated that orders had several times been given to lay out in each county at least two manors of at least six thousand acres apiece for the private use of his lordship and his heirs. These orders, the proprietor complained, had never been strictly carried out, "notw<sup>th</sup>standing he looks upon it as a thing of very greate Concernm<sup>t</sup> to him & his posterity."<sup>7</sup> Though some manors had probably been already laid out in accordance with the earlier instructions, this was the beginning of the maintenance of manors as a regular system.<sup>8</sup>

In accordance with the example of the private manors, the proprietary manors, after being carefully surveyed and entered on the land records, were offered to be leased to tenants in small holdings.<sup>9</sup> Leasing of manors, it seems,

<sup>6</sup> Doughoregan Manor in Howard County is still undivided.

<sup>7</sup> Archives, vol. xv, p. 31.

<sup>8</sup> Secretary Calvert, writing in 1752, stated the motives of the proprietor in this matter as follows: "It was Plann'd by the first Proprietary to inform his successors, that by reserving Judicially particular Parcels of Lands in and about the Province, . . . such Premises would in time make the Demand of them Lands very valuable, and one of the chiefest Recompence for his and their great Expende and Labour for the Enlargement of the Empire and Dominion of Great Britain" (Calvert Papers, No. 2, p. 148).

<sup>9</sup> The land council in 1684 was instructed upon the expiration of any lease within a manor to renew it for five years on the same terms as formerly granted (Archives, vol. xvii, p. 259).

was not carried on to any great extent during the seventeenth century. Perhaps, as has been said before, this was due to the abundance of cheap land, which attracted those persons who in other countries became the tenant class. During the royal period, moreover, the whole system seems to have been neglected and allowed to go to pieces. The manors were left with few tenants, squatters took possession, boundary lines were forgotten, and neighboring landholders encroached until, it is said, one manor was almost entirely lost.<sup>10</sup>

From this state of dilapidation the manors began to revive soon after the restoration of the province to Lord Baltimore. Conditions were then such as made it possible to secure tenants, and the proprietor, like other landholders, began to turn this to account by letting out more and more of his land. From all his manors in 1731 the proprietor received only eighty-five rents, but four of which came from Kent Manor.<sup>11</sup> In 1764 Kent Manor alone contained fifty-seven tenements, most of which were rented.<sup>12</sup>

The terms of the leases under which manor lands were held resembled in many respects the leases of private land. The periods ran from five to twenty-one years or for three lives, with a strong tendency in favor of three lives and twenty-one years. The proprietor generally refused to

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<sup>10</sup> The following, written in 1729, is a description of the manors: "I have heretofore mentioned the necessity of Resurveying your Manors, without which much of them will soon be lost. Many daily Incroach on them, and the Evidences that Can only prove bounded trees, as daily grow Old and Drop off. Your Orders to your Agent therein will I think be of the Utmost Consequence to yr. Landed Interest, and not for the Above reasons to be Delayd. Your Mannor of Pangayah is they say already Swallow'd up, for the people pretend, that no one knows where to find it" (Calvert Papers, No. 2, p. 79). So little regard was paid to the manors that in 1730 the judges of the land office thought it necessary to enter a resolution to the effect that as several persons had attempted to secure warrants for lands heretofore supposed to be manors, it was the opinion of the board that such lands should not be taken up but should be held as reserved to his lordship's use (Land Office, Warrants, EE, p. 64).

<sup>11</sup> Lord Baltimore's account book, 1731 (Calvert Papers, MS., No. 912).

<sup>12</sup> Johns Hopkins University Papers, box 47 and bundle 51-2.

grant leases for any longer terms. About 1752 the tenants of Anne Arundel Manor tried to obtain leases for ninety-nine years renewable for ever, which would have been almost equivalent to granting fee simple title under a quit-rent equal to the rent they had been paying on the manor. This, it will be observed, would have defeated the object of the system by turning over to the tenants all benefit from an increase in value. The proposition was, therefore, flatly refused, and President Tasker was strictly ordered to "Beware of the first Step, in fixing Rents."<sup>13</sup> By this policy in respect to the period of leases the proprietor wished to preserve the power to increase the rent of manors as land increased in value.

The rent reserved by leases of manor lands in the earlier part of the eighteenth century was almost uniformly ten shillings per hundred acres. Sometimes one or more capons were added, and usually an alienation fine equal to two years' rent was imposed. In addition, there were often provisions requiring the erection of dwellings—which were usually thirty feet long by twenty feet wide with a brick chimney—and the setting out and maintaining of one hundred apple trees. The last group of requirements were, obviously, included only in leases of unimproved land.<sup>14</sup> As the century advanced, land became more valuable, and the proprietor exercised his right to advance the rents as leases expired. On the more valuable manors rents were pushed up first to twenty shillings, then to £3, and finally a small number brought £5 per hundred acres.<sup>15</sup> As early as 1743 Benjamin Tasker wrote that "almost the meanest" land on North East Manor in Cecil County would bring twenty shillings per hundred acres.<sup>16</sup> In 1754 rents on manors in Baltimore and Frederick counties were raised to twenty

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<sup>13</sup> Calvert Papers, No. 2, p. 148.

<sup>14</sup> See a number of leases of manor lands in the Johns Hopkins University Papers, box 3. Most land record books for the various counties will also show such leases.

<sup>15</sup> See "Answers to Queries in the London Chronicle," prepared by Secretary Ridout in 1758 (Calvert Papers, MS., No. 596).

<sup>16</sup> Calvert Papers, No. 2, p. 101.

shillings.<sup>17</sup> The war which broke out about this time led to incessant Indian raids on the frontiers, and undoubtedly retarded the advance of manors not only in Frederick County but also in Baltimore; and there may have been no further advance in the rent of these manors. Anne Arundel, however, was far enough removed from the seat of war to make possible in 1755 an advance in Arundel Manor rents from £3 15s. to £5 per hundred acres, but some of the surrounding reserved lands had to be allowed the tenants with each tract leased at this rate.<sup>18</sup>

After the restoration, when it was seen how much the proprietor had profited by the increased value of his manor lands, and especially, about the middle of the century, when leases had made the manors sources of a considerable immediate income, it became the policy of the proprietor to extend the system. By this time the old idea of a manor as a separate legal unit had died out, and the objects formerly reached by the erection of a manor were now frequently gained by merely reserving the land, that is, instructing the officials of the land office not to issue warrants for any land within a prescribed area. This method was also sometimes employed to limit the area open to settlement so as to force population into sections where it was desired.

As early as 1724 a manor of ten thousand acres was laid out on the Potomac;<sup>19</sup> and in 1731 the land office began to extend the old manors by systematically reserving all lands that might fall escheat or forfeit within three miles of any existing manor.<sup>20</sup> A similar reserve was entered in 1739 on all lands within five miles of Annapolis.<sup>21</sup> A large extension of the manors seems to have been contemplated about 1754, but the project failed because the surveyors could find no unpatented tracts large enough except in Frederick County, or on the barrens of what are now Baltimore and

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<sup>17</sup> Archives, vol. vi, p. 71.

<sup>18</sup> Ibid., vol. vi, pp. 161, 294.

<sup>19</sup> Kilty, p. 229.

<sup>20</sup> Ibid., p. 101.

<sup>21</sup> Land Office, Warrants, LG No. A, p. 64; Kilty, p. 236.

Carroll counties, and possibly in the lower part of the Eastern Shore. None of these lands were thought worth reserving except those in Frederick County, where there were already two large manors.<sup>22</sup> In 1760 it was decided to lay out another manor in Frederick County, and again no unpatented tract of five thousand acres could be found except in the extreme western part of the province; but in 1764 a tract of ten thousand acres was reserved west of Fort Cumberland.<sup>23</sup> An account of the manors on the Western Shore, apparently made out about 1764, shows over one hundred thousand acres of manor and reserved land on that shore alone.<sup>24</sup>

Control of this vast estate was entrusted to a very inadequate organization. In the seventeenth century the management of manors seems to have been left at first to the governor and later to the land council. During the royal period the agent took charge of all the affairs of the proprietor. It is difficult to say what officers were put in charge of the manors immediately after the restoration. There was no organized system of control, but some persons seem to have had special duties concerning them. Bennett Lowe of St. Mary's County in 1722 is found empowered to lease all the manors on the Eastern Shore,<sup>25</sup> yet the officials of the land office seem to have been the persons who laid out new manors.<sup>26</sup> By the instructions to Governor Ogle in 1733 he was empowered, with the advice of the agent, to lease any manors or reserves, to appoint stewards or other officers for the same, and to determine what gratuities should be allowed these stewards. He was also empowered to determine the conditions on which land would be granted on each

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<sup>22</sup> Archives, vol. vi, p. 52.

<sup>23</sup> Ibid., vol. xiv, pp. 370, 402; Kilty, p. 241.

<sup>24</sup> Johns Hopkins University Papers, box 40.

<sup>25</sup> Preamble of a lease recorded in Queen Anne County (Land Records, JK No. B, p. 119).

<sup>26</sup> Additional instructions to Philemon Lloyd in 1724 commend him for having laid out a manor on the Potomac. Quoted by Kilty, p. 229.

manor, and to notify the steward thereof.<sup>27</sup> From this grew up a system for the control of manors.

Under the fully developed plan the determination of large questions relating to terms of leases, sales of manor land, and the laying out of new manors was left to the governor and the agent, who frequently acted only after direct communication with the proprietor. In laying out new manors the initiative usually came from the proprietor through an instruction either to the governor or to the agent, who in turn sent word to the judges of the land office to issue no more patents for land within the prescribed limits.<sup>28</sup> All special matters relating to manors, such as special surveys, were managed by the governor under direct instructions from the proprietor.

The routine work of finding tenants, leasing lands, and collecting the rents was left to the stewards of the various manors.<sup>29</sup> These officers were given, by way of compensation, free tenure of one tenement on the manor; but it must not be thought that the steward always occupied this tenement in person. One man was frequently the steward of several manors. Young Parran, for instance, was at one time in charge of no less than eleven manors in Charles and St. Mary's counties.<sup>30</sup> When manor land was leased, the steward ran the lines of the tenement, made out a certificate, and drew a lease in duplicate. These were sent to the agent, who, if he approved, signed the leases himself, secured the governor's signature, and returned one of the duplicates to the steward to be delivered to the tenant. Each steward was supposed to keep a roll on which all leases were entered and which showed the amounts of rent due. According to

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<sup>27</sup> Archives, vol. xxviii, pp. 67-68.

<sup>28</sup> For entries of such instructions, see Land Office, Warrants, EE, pp. 392, 526.

<sup>29</sup> Collington Manor in Prince George's County seems to have had no steward, but to have had its rents collected by the sheriff of the county. This condition, however, may have been but temporary. See a paper marked "A State of the Manors on the Western Shore" (Johns Hopkins University Papers, box 40).

<sup>30</sup> A State of the Manors on the Western Shore (Johns Hopkins University Papers, box 40).

this roll the rents were collected and turned over to the agent.<sup>21</sup>

The defects of this system are evident, as it provided no effective supervision of the manors, and it was to nobody's interest to see them tenanted and well managed. Finding and selecting tenants, as we have seen, was the most serious duty of those who would rent out land. This work was sadly neglected by the stewards, who, far from being encouraged to spend money or effort in securing tenants, found it actually to their interest to neglect to do so. Consequently, with no incentive to lead the stewards to an energetic discharge of their duties and with no supervision to force them to it, the proprietor's manors were permitted to fall into neglect and disorder.

The fact that rents on manors were somewhat lower than those on private lands led perhaps to a supply of tenants who applied for land of their own accord. Nevertheless, the manors were never entirely leased out, and Governor Sharpe suggested that the stewards should be encouraged to advertise for tenants.<sup>22</sup> The collection of rents seems also to have been neglected by the stewards. Agricultural tenants under fixed rents always experience years of failure when they are unable to pay, but the manor tenants seem to have been allowed to fall into arrears at times when there was no excuse for it. More important, however, than either of these two abuses was the familiar complaint that the tenants pillaged the land. In 1754, as we have seen, Sharpe wrote that it was necessary to protect the manors from exhaustion by inserting a clause in the leases restricting the amount of tobacco to be planted during the last three years of the tenancy.<sup>23</sup> The plunder of timber, also, was sometimes restrained by lease provisions that no timber should be sold; but tenements were often cleared up unduly in order to have the land in cultivation. According to an appraisement of Kent Manor made about 1765, out of fifty-seven tenements

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<sup>21</sup> Archives, vol. ix, pp. 407-408.

<sup>22</sup> Ibid., vol. ix, p. 63.

<sup>23</sup> Ibid., vol. vi, p. 38.

only nineteen had sufficient timber.<sup>34</sup> In 1754 Secretary Calvert wrote to Edward Lloyd concerning the manors as follows: "Y<sup>r</sup> observation of the Ill-treatment of the Proprietor's Manors & the Tenements is so glaring abuse of [by] former Gov<sup>rs</sup>. & Agents Receiver Gen<sup>ls</sup>. as seems to cancel obligation for them; [because of] their Suffering the Manors & Reserved Lands [to be] Let under no conditions of Restriction upon the Tenants, the Lands have been impoverish'd & Pillaged of the Timber, that occasions them Un-Tenanted."<sup>35</sup>

The loudest complaint against the management of manors was caused by the confusion of boundaries which resulted from inaccurate surveys and neglect of the preservation of leases. So great was the confusion into which the manors had fallen in this respect that when the proprietor about 1757 ordered surveys and plats to be made of all his manors, the surveyors found so many leases missing and so many lines intersecting that the project resulted in an almost complete failure.<sup>36</sup> Governor Sharpe wrote to Secretary Calvert on this subject as follows: "I have already observed to you that the Mannors have never been managed after so regular & orderly a Method as they ought some of the Leases have been Lodged with the Agent & of others he has not even seen copies. Many of the Stewards have been heretofore extremely negligent & some of them resided at so great a Distance from the Mannours which they were appointed to take Care of that perhaps they never or very seldom saw them, & indeed the Sallaries allowed were too small to encourage a Person of Credit to undertake that Duty or to induce any one to execute it with Dilligence."<sup>37</sup>

In spite of mismanagement and disorder the manors paid a handsome revenue. Before the restoration no present returns were expected, the only hope being for the future; but when leasing began in earnest, the revenues mounted

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<sup>34</sup> Johns Hopkins University Papers, box 47.

<sup>35</sup> Calvert Papers, No. 2, p. 180.

<sup>36</sup> Archives, vol. vi, p. 522; vol. ix, p. 52.

<sup>37</sup> Ibid., vol. ix, p. 62.



rapidly. In 1731 the total receipt from manors, including fines and several payments of back rent, was £135 18s. 10½d. sterling, of which about £35 came from the Principio Iron Company in payment for lands to supply wood to the iron works.<sup>38</sup> By 1761 the revenue from this source was more than £1000.<sup>39</sup> Moreover, many tenements had been leased in the early days at low rents which were now gradually being increased as the leases were renewed. On Anne Arundel Manor, where, perhaps, rents were at their highest point, the manor rent-roll in 1755 amounted to £310 10s. 3d.,—almost exactly one half of the quit-rent from the county.<sup>40</sup> Had a little more attention been given to the development of these lands they might easily have been made to rival the quit-rent in the production of revenue.

Notwithstanding their productivity, the proprietor in 1764 suddenly resolved to sell all his manors. As late as April, 1764, orders to lay out new manors or reserves had given promise of not only a continuation but even an extension of the system. What led Secretary Calvert and Frederick, Lord Baltimore, to this sudden reversal of policy it is difficult to say. They may have been influenced by the argument of Daniel Dulany that the revenue from manors was not sufficient to pay interest on the capital involved.<sup>41</sup> A hun-

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<sup>38</sup> Account of Lord Baltimore's Revenues (Calvert Papers, MS., No. 912).

<sup>39</sup> Account of Lord Baltimore's Revenues (Calvert Papers, MS., No. 977).

<sup>40</sup> Anne Arundel Rent-Roll, 1755 (Calvert Papers, MS., No. 899).

<sup>41</sup> On September 10, 1764, Dulany wrote to Calvert as follows:—

"In a few years there will be very little vacant Land, & therefore there will be probably more Attention bestow'd upon the Improvement of the manors, or reserved Lands. Every Gentleman who lets out Land in this Country, knows, how difficult it is, with the utmost Care, to make any considerable profit by that scheme, & how impracticable it is, to get an annual Rent equal to half the Interest w<sup>ch</sup> wou'd arise from the money, for which the Land wou'd sell, or to prevent the Abuses of Tenants in the Commission of waste . . . If Landlords on the Spot find little profit & suffer much from waste & Destruction of Timber, it may be easily imagin'd, that his Lordship finds less, & suffers more . . . If it be a fact, w<sup>ch</sup> no one can controvert, that the Rent even when punctually paid, falls short considerably of the Interest of the money for which the Land wou'd sell—if his Lordship makes less Profit by his Leases, & suffers more from the abuses of waste, & the Destruction of

dred acre tenement worth £100 was not profitable, it was argued, when renting for only £5 per year and suffering an unavoidable waste of timber and fertility. This argument, however, leaves out of account the increase in the value of land, which had already made the manors a rich domain and by which they were steadily becoming more valuable. Governor Sharpe opposed Dulany, and held that if men in the colony thought it profitable to purchase land at high rates as they were doing, merely with a view of leasing it out later when patent land could not be obtained and rents were higher, it must be to the interest of the proprietor to retain what manors he had.<sup>42</sup> Perhaps the most potent argument for the sale of the manors was that the step seemed to afford a source of ready money, and the spendthrift proprietor never let the interests of posterity interfere with the interests of the present.

In 1765 orders were received to sell six manors in Charles, St. Mary's, and Somerset counties, totalling 28,530 acres, and all reserved lands that were not cultivated. The proprietor seems to have thought that these manors were entirely waste, and Governor Sharpe, on learning that all were in large part tenanted, seems to have delayed exposing them for sale until he could inform the proprietor of this fact.<sup>43</sup> The proprietor's reply was to appoint a commission of three—Sharpe, Dulany, and Jordan—to sell all manor lands, waste or cultivated.<sup>44</sup>

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Timber, than other Gentlemen upon the spot generally do—if He loses the quit-rent, & the casual Profits of Alienation-fines, & Escheats by reserving his Lands, a loss to w<sup>ch</sup> Others are not subject—it wou'd seem that it wou'd redound more to his Benefit to sell, than retain them. It is true Land may rise in its value; but of that there is not a very near prospect to those who reflect what immense Tracts of Land are now to be settled in America in Consequence of our late Acquisitions & that Land like every other Commodity is valuable, or not, in proportion to its Plenty, or scarcity & must rise very considerably indeed, in the Course of twenty years to compensate for the Loss of the above Interest, the common quit-rent, the Alienation-fine & the chance of Escheats in the mean time" (Calvert Papers, No. 2, pp. 242-243).

<sup>42</sup> Archives, vol. xiv, p. 204.

<sup>43</sup> Ibid., vol. xiv, pp. 189-93, 202-4.

<sup>44</sup> Council Records, JR and US, pp. 415-20; Kilty, p. 242.

Under this commission during the next few years much land was sold, but the demand was not so great as had been expected. Very few bidders appeared at the sales, and as the commissioners were forbidden to sell for less than ten shillings per acre, the lands had repeatedly to be withdrawn. Sharpe wrote in October, 1766, that at a sale at which the Queen Anne Manor and two parcels of escheated land in Anne Arundel County were offered, no bidders appeared except for one of the escheated tracts, for which the price went as high as thirty-one shillings per acre. For this apathy Sharpe assigned two reasons: "the Scarcity of Money in the Province is at present so great that few People have much to command, & the Tenants who if they had Money could afford to give more for their respective Tenements than any other Persons are in general very poor, & their Neighbours who are able to purchase seem to think it would be ungenerous to purchase over their Heads as they term it."<sup>45</sup>

The effect of these partial sales and withdrawals was merely to intersperse patented lands among what had previously been solid tracts of manor, and to demoralize the whole system. The attempt to sell was given up after a few years, and what lands were left unsold were retained by the proprietor until the Revolution. This interval was too short and too troubled for the proprietor to formulate any very definite policy toward the manors.

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<sup>45</sup> Archives, vol. xiv, p. 335.

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**THE GOVERNMENT OF AMERICAN  
TRADE UNIONS**



**SERIES XXXI**

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IN  
HISTORICAL AND POLITICAL SCIENCE**

**Under the Direction of the  
Departments of History, Political Economy, and  
Political Science**

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**THE GOVERNMENT OF AMERICAN  
TRADE UNIONS**

**BY**

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## PREFACE

This study was undertaken while the author was a graduate student at the Johns Hopkins University. It was submitted as a dissertation in partial fulfilment of the requirements for the degree of Doctor of Philosophy from that institution in June, 1907. Some portions of it have been amplified and other parts rewritten since that time.

The large and valuable collection of trade-union publications at the Johns Hopkins University has been used, and other documents at the headquarters of the national unions have been consulted. Use has been made of the scattered pamphlet literature published particularly during the second quarter of the nineteenth century. Information gleaned from records has been supplemented by personal interviews with officials of most of the national unions and with officers of local unions in Baltimore, Boston, New York, Chicago, and St. Louis.

The author wishes to acknowledge the assistance received at every stage of the work from Professor Jacob H. Hollander and Professor George E. Barnett, of the Johns Hopkins University.

T. W. G.





# THE GOVERNMENT OF AMERICAN TRADE UNIONS

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## PART I

### THE UNIT OF GOVERNMENT

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#### CHAPTER I

##### THE SHOP MEETING

The original unit of government in American labor organization is the mass-meeting of members either in shop meeting or in local union. Shop meetings are assemblies of those working in the same industrial establishment, and are ordinarily held in the shop or factory. Meetings of workmen are nearly always convoked, however, outside the establishment, and are usually attended by journeymen not merely from one shop but from a number of shops in the locality. Popular assemblies uniting the members of a craft throughout an entire community are commonly known as "locals" or local unions. All other units of government—the district, state, national, and international associations—are combinations of shop meetings or of local unions.

The formation of permanently organized unions is usually preceded by a period of unorganized resistance during which the journeymen of a craft, when aroused to action by a reduction of wages or some other specific grievance, decide without forethought or preparation to strike. For example, the anthracite miners, prior to the formation of unions in their trade, which occurred about 1868, did not passively

endure their low wages and dilapidated houses and the mulcting of their earnings by the high-priced company stores. Isolated strikes, incited by the bolder and more turbulent spirits, broke out now at one mine and now at another; but as these movements were disunited and without preparation, the employers succeeded in quickly crushing them.<sup>1</sup> Sometimes such unorganized movements involve all the journeymen of a trade in a locality, but as a rule they are limited to the members of a single shop or factory. Shop strikes occur frequently at the present day in unorganized trades, and this fact is often used by labor leaders to substantiate their statements that the strike preceded and was not invented by the trade union.

The form of organization known as the shop meeting has had a long history. The "shop call" existing among the hatters of Danbury, Connecticut, as late as 1885 was an ancient institution which antedated the formation of permanent unions among the craft, and it is said to have had its origin far back in colonial times. For many years, whenever any man, woman, or child working in a hat factory had a grievance, he or she cried, "Shop called." Immediately a meeting of all the employees in the shop was held, and the complaint was laid before them. If the grievance was considered just, a committee was appointed to wait upon the employer; and if this committee reported a rejection of its demands, the members of the shop assembled in meeting decided whether or not to strike.<sup>2</sup>

In the trade-union organization of today the shop is a comparatively unimportant unit of government, used ordinarily only for limited administrative purposes. Shop meetings are, indeed, so inconvenient that they can be convoked only at long intervals, otherwise difficulty arises with employers; and they are being discontinued by the Hatters and by other unions among which they once prevailed.

Important exceptions are found in certain trades in which

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<sup>1</sup> First Annual Report of the Bureau of Statistics of Labor and Agriculture of the Commonwealth of Pennsylvania, p. 328.

<sup>2</sup> New Haven Register, December, 1893.

the somewhat elaborate machinery of an organized local union is not justified because the number of workmen in each community is very small. The members are united through informal shop meetings, convoked within the walls of the factory. Such is the policy of the Print Cutters, who make the wooden rollers used in printing wall-paper. Whether the rollers are prepared by the manufacturer of wall-paper or by small jobbers who make a specialty of this kind of work, the demand for rollers is so limited that only a mere handful of print cutters are found in each factory. As a consequence, even in places where several shops are located the total number of print cutters is so small that the formation of a local union is often not deemed advisable. In fact, only four local unions have been chartered by the National Print Cutters' Association, namely, one in each of the cities of New York, Philadelphia, Buffalo, and New Brunswick, New Jersey. In other cities the men employed in each shop hold meetings and elect a clerk, who collects dues and enforces the observance of union rules. A committee is also created to have charge of the label and to lay the grievances of the men before the employer. The members of a shop are not permitted to strike or to take any decisive step without consulting the nearest local union, because, it is said, if power is vested in such a small body, the leaders among them can be too readily discovered and punished for their aggressiveness by employers.

The Machine Textile Printers, who print cotton and woolen goods, are similarly organized because of similar conditions. Whether textiles are printed by the cotton or woolen manufacturer or by the small jobber who specializes in this part of the work, the number of machine printers in each mill is small. The Machine Textile Printers have no local unions, but maintain in each establishment an informal shop organization. The shops are federated into four district unions, known respectively as the Eastern, the Western, the Northern, and the Southern District. A "delegate" to the national board of directors serves as the head of each

district, and conventions of representatives from each shop within the district are held at intervals.<sup>8</sup>

The employees in each industrial establishment might have formed themselves into a constitutionally organized body with meeting places outside of the shop or factory, and in this way the members of a trade in each locality would have been divided into as many unions as there were shops. Certain conditions made necessary, however, the early rise of the so-called local union with jurisdiction over all members of a craft in the same town or city. In the first place, close cooperation was needed between the journeymen of the same trade in the various shops of a community in order to maintain uniform conditions of employment, for if the men in one shop succeeded in raising wages above the general level, their fellow-craftsmen in neighboring establishments were likely to compete for such choice employment and, by underbidding, force wages down again. Moreover, the employer who was compelled to pay higher wages than the average was greatly handicapped in his struggle against competitors, and was likely to be driven out of business. In the second place, journeymen in each shop usually—certainly during the infancy of American trade unionism—constituted too small a group to enable them without considerable financial strain to rent a hall, pay officers' salaries, and meet all expenses incident to the maintenance of a well-organized society. In other words, the government of one large mass-meeting is more economical than the government of many small ones. Finally, the beneficiary aims of early trade societies also rendered advantageous, from a financial standpoint, as large a membership as possible. In nearly all trades, therefore, the first governmental trade body possessing a constitution, meeting at regular intervals, and bargaining with employers according to certain definite policies was the local union.

In certain trades where the industrial establishments are

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<sup>8</sup> Rules, Regulations and By-Laws of the Machine Printers' Beneficial Association of the United States, 1886. The constitution of 1886 is still in force.

exceptionally large and widely scattered the journeymen working for each employer constitute a single local union. The miners at each colliery, who are a numerous and more or less isolated body, usually compose the primary unit of government. At first, informal meetings were held whenever an emergency required, either in the pit, or on the open common near the shaft of the mine;<sup>4</sup> but after some difficulty the miners were slowly persuaded to hire a hall, meet at regular intervals, and adopt a constitution. Great mass-meetings of the miners at all pits in the vicinity of a certain town have indeed been convoked, but only very occasionally, and for a specific purpose. In the bituminous coal fields of western Pennsylvania, for example, when the miners at one colliery "blacklegged," in other words, when they filled the contracts of a neighboring pit where the men were on strike, the workers at the other collieries in the vicinity would occasionally hold a mass-meeting, pass resolutions of remonstrance, and sometimes march in a procession to the blacklegging pit, there to camp until the men laid down their picks.<sup>5</sup>

Since in the window glass industry the factories are all large and since there is usually only one plant in each town, the several national unions<sup>6</sup> of window glass workers organize the men in each establishment into a governmental body, known as the "preceptory." In a few of the places where two or more window glass factories exist the workers meet together in joint session. There has been considerable opposition to these joint mass-meetings, and the recently formed 'Amalgamated Window Glass Workers of America at the first annual convention forbade its members to hold them.'<sup>7</sup>

Among the shirt, waist, and laundry workers of Troy the employees in each factory at first constituted a separate union. The United Laundry Workers, chartered by the

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<sup>4</sup> National Labor Tribune, July 23, 1883, p. 5.

<sup>5</sup> Ibid., July 28, 1880.

<sup>6</sup> The terms 'national union' and 'international union' are used synonymously throughout this essay. See below, p. 75.

<sup>7</sup> Proceedings, 1905, p. 116.

American Federation of Labor in 1899, permitted the members of one "shop union" to enroll laundry workers employed in another factory, provided they were given neither voice nor vote in the meetings. When ten laundry workers from another factory had been admitted, they were to be organized into a separate union. In the case of custom or small laundries a union of members working in several shops could be formed.<sup>8</sup> When in 1900 the Laundry Workers were merged into the Shirt, Waist, and Laundry Workers' International Union, no such rules were adopted; and apparently the general policy of the present association is to organize in each city either a single local union or several local unions, one for each branch of the trade.

In the railway unions the members are organized, whenever practicable, according to the railroad upon which they are employed. The Brotherhood of Locomotive Engineers permits five or more engineers working on the same railway system to organize a lodge or local subdivision. In some instances the brotherhood has had to organize subdivisions comprising engineers who run engines on different roads.<sup>9</sup> The Locomotive Firemen, the Conductors, and the Trainmen also organize their members, whenever practicable, into local lodges according to the system upon which they are employed, though none of them have, like the Engineers, adopted a fixed rule to this effect. Even the yardmen, whose work is localized in character, whose wages vary at different points on the same railroad, and whose methods of bargaining are perhaps somewhat less uniform than those of the other railroad employees, have found advantageous in many cases the plan of organizing the members according to the railway system on which they work. Thus the local union of switchmen in Buffalo at first included switchmen employed in the yards of the New York Central, Michigan Central, Lake Shore, Nickel Plate, and other lines running into that city. The inconvenience of this policy

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<sup>8</sup> Constitution and By-Laws, 1899, art. iii.

<sup>9</sup> Constitution and Statutes, 1904: Constitution, sec. 50, Standing Rules, secs. 1, 2.

was soon manifest. At meetings of the union complaint was made that the men employed by the New York Central, who formed a majority, would cause all questions relating to their own system—questions upon which in all probability only they themselves could vote—to be considered early in the evening. Matters of interest to switchmen on other roads were delayed until midnight, and sometimes not considered at all. Much ill-feeling was engendered; and today there are six switchmen's lodges in Buffalo, one for each line having terminal facilities in that city. In many places, however, the yardmen on all railroads are organized into one local union. Save in the above exceptional instances and in those places where there happens to be only one shop or factory devoted to a particular industry, the employees in each commercial or manufacturing establishment are not organized into separate unions.

## CHAPTER II

### THE COMPOSITION OF THE LOCAL UNION

The territorial jurisdiction of a local union is usually bounded by corporate limits of the town or city in which it is located. In some instances, however, its territorial jurisdiction is extended so as to include small outlying towns, since the journeymen in such places, organized or unorganized, may seriously undermine the scale of wages enforced by the strong union in a large city. The New York local union of the International Printing Pressmen and Assistants' Union, for example, has jurisdiction over members of the trade within a radius of fifty miles from the city, and includes pressmen in such towns as Hoboken, Jersey City, and Newark, as well as the several boroughs of Greater New York.

In a few instances certain peculiar conditions of the trade have rendered necessary the formation of local unions of even wider territorial jurisdiction than the Pressmen's Union of New York City. Thus the structural iron workers who are sent out in gangs from large cities to build bridges, frequently form colonies in isolated communities, and the territorial jurisdiction of the local union in each large city is made broad enough to include these colonies. The Cleveland local union, for example, embraces within its membership all structural iron workers in forty-three counties. Similar conditions exist among the compressed air workers, who work in the caissons and diving-bells used in driving piles and building piers for bridges. The important companies employing compressed air workers have their offices in New York City, whence gangs of men are sent to all parts of the country; and the union of the craft, though bearing the title of a national organization, is really a local



union of about four hundred members, with headquarters in New York City. The men in each colony maintain an informal organization during the weeks or months in which they are absent from New York, but their wages are fixed by the local union before they leave the city, and all power is practically vested in the mass-meeting of members who remain in New York.

During the early days of American trade unionism the journeymen of each craft constituted a fairly homogeneous body, and each of the early local societies admitted any worker at the trade living in the territory over which it claimed jurisdiction. The division of labor, the influx of foreigners, and the appearance of women and negroes in industry have created distinct groups within the craft, however, and have made necessary in many trades the organization of these groups into separate local unions.

Before the rise of American trade unions the work in certain industries had already been subdivided. In the early part of the nineteenth century there were employed, for example, upon the building of a ship a number of different craftsmen, such as the sail-maker, the rigger, the ship-carpenter, the ship-joiner, and the caulker.<sup>1</sup> With the development of industry in the United States many other crafts have been divided into numerous subcrafts or branches. In place of the shoemaker, who received the leather from the middleman and made the whole shoe in his own little shop, there have appeared the cutter, the fitter, the treer, the stitcher, the laster, the heeler, the sole tacker, the edge maker, and the shoe fastener, all working together in large establishments to produce the finished article. The tailor who cut the garment and sewed it with his needle has been replaced in the ready-made clothing industry and, to a certain extent, even in the custom trade by the measurer, the cutter, the trimmer, the stitcher, the baster, the examiner, the sponger, the

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<sup>1</sup> Baltimore American and Commercial Daily Advertiser, June 30, 1809.

presser on coats, the presser on pants, the roller, and the folder. At first, the divisions of a trade were by no means rigidly fixed. Thus even today, although the work of manufacturing a cigar is often divided between a leaf selector, a stripper, a filler, a breaker, and a roller, yet in many shops the same journeyman performs all of these separate processes, and the union insists that whenever it is possible the apprentice be trained to be an "all-round workman," capable of making the whole cigar. Gradually, however, the several branches assume all the characteristics of distinct trades. In the clothing trade, for example, the baster comes to know only his special part and cannot perform the work of the cutter; he is paid a different wage, and is absorbed completely in his peculiar class interests.

There is now a strong tendency to unite all of the trades or divisions of a trade in any one industry into a single national federation of local societies. Thus the present national union of wooden ship-builders includes shipwrights, joiners, caulkers, boat builders, and ship cabinet-makers. For many years the International Typographical Union embraced bookbinders, compositors, pressmen, stereotypers and electrotypers, and photo-engravers, and today it has jurisdiction over compositors, proof-readers, machine tenders, mailers, and type founders.

The organization of the members of several trades or branches of a trade in the same local union has, however, been found undesirable. In the first place, each group of workmen in an industry resents the right of the other groups to vote upon the numerous matters which it considers its particular concern. If in addition one group of workers is in the majority and is able to dominate the general meeting, friction is almost inevitable. At the same time, the very close cooperation required to maintain a uniform scale of wages for journeymen performing the same work is unnecessary between groups of employees doing different kinds of work and hence receiving different wages.

As lines of cleavage have appeared within the craft, local

societies have split asunder into several independent unions, one for each branch of the trade. The Iron Molders' Union of North America,<sup>2</sup> the Amalgamated Association of Iron, Steel and Tin Workers,<sup>3</sup> and other national unions from the beginning of their history have permitted the constituent trades or divisions of a trade to form separate local societies. On the other hand, the International Typographical Union has as far as possible required all members of the craft to be united in a single local union, and has departed from this policy only in exceptional cases and then with great reluctance.<sup>4</sup> The national unions of window glass workers do not subdivide their members according to the four branches of the craft, but unite all the employees in the same plant into one local union. Unions of unskilled laborers need not subdivide their members according to the character of their work. For example, the Laborers' Protective Society of New York City is a local union composed of hod-carriers, mortar-mixers, and other helpers of the bricklayers and the masons. The National Association of Blast Furnace Workers and Smelters of America, a union of comparatively unskilled workers, does not attempt to organize those doing different kinds of work into separate local unions.

As the division of labor is made more minute and as machinery is introduced, work becomes more unskilled, the employees pass more readily from one kind of work to another, differences between trades begin to be obliterated, and organization into separate local unions according to branch of employment is unnecessary. In the large packing houses of Chicago the work is minutely divided. Thus, in the department of cattle butchering alone there are over thirty specialists from the unskilled foot skinner and paunch trimmer to the skilled splitter and floorman. Apprenticeship is unknown, and the unskilled workman passes by promotion from the lowest to the highest grade of work. Between

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<sup>2</sup> Constitution, 1859, art. iii, sec. 2, in *Proceedings*, 1859.

<sup>3</sup> *National Labor Tribune*, August 5, 1876, p. 1.

<sup>4</sup> G. E. Barnett, "The Government of the Typographical Union," in *Studies in American Trade Unionism*, ed. by Hollander and Barnett, pp. 24-25.

employees in different departments there is some distinction, and the Amalgamated Meat Cutters and Butcher Workmen gather those in each department into a separate union. In the city of Chicago, for example, there are local unions of cattle butchers, hog butchers, hide cellar men, oleomargarine workers, sausage makers, lard refinery employees, and so on, but the continual shifting from one kind of work to another makes the subdivision of those in each department undesirable.<sup>5</sup> Similarly, among the mine workers, whose national union gathers together into the same body all classes of employees about a colliery, there is a constant movement upward from the least skilled to the most skilled work. The breaker boy, the door boy, or the fan boy may later become a driver or a runner, or may by successive steps be promoted from mine laborer to miner and, if he show ability, from miner to fire boss and foreman. By a reverse process the skilled miner, incapacitated by accident or old age, returns to slate picking, and so becomes a breaker boy again.

In some national unions there has been urged the adoption of a rule requiring that the members doing a certain kind of work be always organized into separate local unions, and that in places where they are not sufficiently numerous to form a union they join the nearest local union of this branch of the trade. Such a rule was advocated but not passed by the Cigar Makers' International Union after the admission of the cigar packers about 1885.<sup>6</sup> Most national unions charter a separate local union for each of the most important branches of the trade in the large cities, and in the small places unite all members in one union. In small communities there are too few of each division of the craft to warrant separation, and the boundaries between trades are not always so clearly defined as in the large cities. Thus

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<sup>5</sup> For an account of the method of organization and history of the growth of locals among the workers in the different departments of the Chicago packing houses, see *Official Journal* [Amalgamated Meat Cutters and Butcher Workmen of North America], March, 1903, pp. 1-12. See also J. R. Commons, "Labor Conditions in Slaughtering and Meat Packing," in *Quarterly Journal of Economics*, vol. xix, pp. 1-32.

<sup>6</sup> Proceedings, 1887.

the bricklayers who in the large cities only lay bricks, in rural sections often do the work of stone masons and plasterers.

The policy of the national unions varies greatly. Some of them, such as the associations of brick, tile, and terra cotta workers and of the ship-wrights, joiners, and caulkers, grant charters to separate divisions of the craft only in the largest centers of the industry. In the important shoe centers separate charters are granted to a number of the various branches of boot- and shoemakers. In other places, while the lasters and cutters who form the most skilled portion of the craft are organized into separate local unions, all other branches of the trade are gathered together into one union. In some of the smaller centers all boot and shoe workers are organized into a single local union.

The International Ladies' Garment Workers' Union divides its members into local unions primarily according to the particular garment upon which they are employed, and subordinate unions of ladies' waistmakers, shirt makers, and cloak operators have been formed in New York City. The cutters, who compose probably one of the most skilled groups among the garment workers, desire whenever it is possible to be organized separately from the other divisions of the trade, and cutters on all kinds of ladies' garments are usually gathered together into one local union. In New York, however, some attempt has been made to subdivide them again according to the garment upon which they are employed. The Gotham Association, for example, is composed of all cutters upon washable goods. The United Cloak and Suit Cutters' Association claims jurisdiction over cutters in all shops devoted exclusively to the manufacture of ladies' outer garments. In some places the cloak pressers are formed into separate unions.<sup>7</sup> The United Garment Workers, composed of those manufacturing men's ready-made clothing, carry out much more completely this twofold division into local unions according to the kind of garment and the par-

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<sup>7</sup> Quarterly Report of the International Ladies' Garment Workers' Union, December 1, 1902, to March 1, 1903, p. 4.

ticular part of the work done. The line of demarcation is, however, difficult to maintain. Ladies' cloak and suit factories, for example, make washable garments, either regularly, or at times when the demand for their special line of goods falls off; and this has caused some friction between the association of ladies' cloak and suit cutters and the association of cutters on ladies' washable goods in New York City. To conclude, rigid rules are impracticable. The organization of local societies must be determined by the peculiar way in which the trade is subdivided and by the conditions in each city.

Many national associations which grant separate charters to each branch of the trade have refused further to subdivide the local union so as to create more than one local union for each branch. The objections are that the existence of two or more unions in the same branch of the trade in any locality may mean two or more conflicting wage scales and sets of apprentice rules; that several small unions are more expensive than one large one; and that if suspended members or a dissatisfied minority can secede and obtain a separate charter or join another existing society, the authority of the local union will be undermined. The unions of a trade in each locality can, however, maintain uniform conditions of employment by cooperating together in district councils. The local union may be prevented from becoming too small by fixing a minimum number of applicants to whom a charter may be granted. In order to keep suspended members of a local union from getting a charter, many national unions require that the consent of the unions already existing in the community must first be obtained. Since, however, this rule prevents the formation of local unions even when it is desirable, the Cigar Makers' International Union and a few other organizations vest all power to grant charters in the national executive board; but before a new charter is granted, the application must be brought to the attention of the other unions in the community, and

all objections are carefully considered.<sup>8</sup> So, while the Boot and Shoe Workers' Union,<sup>9</sup> the United Brewery Workmen,<sup>10</sup> and a few other national associations recognize in the composition of their local units of government only differences in the kind of work, many others subdivide the members into subordinate unions according to differences of sex, color, nationality, and sometimes merely for governmental convenience.

Experience has shown that whenever it is possible women should be organized separately. In the first place, women hesitate to join a union composed largely of men. Moreover, the claim is made that in mixed local unions the men do not accord the women full opportunity to discuss their particular class concerns, and show prejudice when allowed to vote on questions of interest to their female members. Certainly, womens' unions enroll a much larger proportion of the female section of the trade and arouse greater and more sustained enthusiasm than do mixed unions.

Local unions composed wholly of women undoubtedly existed at an early date. About 1833 the United Beneficial Society of Journeymen Cordwainers of New York City organized a women's branch which was not strong, and came together only as occasion demanded.<sup>11</sup> The cordwainers of Philadelphia also formed a women's branch about this time.<sup>12</sup> In 1846 the female shoe stitchers of Lynn formed a Stitchers' League, which was wrecked by a few malcontents after a short existence. In 1855 the stitchers of Lynn secretly reorganized and maintained an existence for a few years, and these same stitchers of Lynn were the first of the boot and

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<sup>8</sup> Constitution of the Cigar Makers, adopted 1896, fourteenth edition, sec. 170.

<sup>9</sup> Constitution, revised 1906, sec. 41.

<sup>10</sup> Constitution, 1904, art. ix, sec. 1.

<sup>11</sup> Rise and Progress of the General Trades' Union of the City of New York, and its Vicinity, with an Address to the Mechanics in the City of New York and through the United States. New York, 1833. P. 1.

<sup>12</sup> Address issued to the Citizens and Government of Philadelphia. Philadelphia, 1835.

shoe workers to apply for a charter from the Knights of Labor in 1883. They were organized as Daughters of Labor Assembly No. 3016 and, in accordance with the policy of the Knights of Labor, admitted not only stitchers, but also women working at other trades.<sup>13</sup> Local unions of female laundry workers, cap makers, printers, parasol and umbrella makers, tailors, and workers in other trades were organized in various places after the close of the Civil War. In 1870 the National Lodge of the Daughters of St. Crispin was formed, with subordinate lodges of stitchers in various places. A convention of the women's unions in New York State was held in the same year, and an attempt was made to form a State Workingwomen's Association, but the organization died with the adjournment of the convention.<sup>14</sup> The depression which began in 1873 wrought the destruction of women's societies in common with the general destruction of most trade unions throughout the country. Of late years the movement to organize women as compared with the growth of trade unions among men has proceeded but slowly, though with more success in the West than in the East. In Chicago the movement has, indeed, attained considerable proportions. An overwhelming majority of the women workers in twenty-six different trades, with a total membership of about thirty-five thousand, were organized in 1904. The list includes unions of women cracker packers, waitresses, laundresses, paper-box makers, and scrub-women, and embraces, with two important exceptions—namely, the servant girls and the stenographers—almost every trade in which women are extensively employed in Chicago.

When, as in the case of the boot and shoe stitchers, the overall workers, and the hat trimmers, all those in one branch of a trade are women, the problem of separating the two sexes resolves itself simply into a division according

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<sup>13</sup> The Laster, February 15, 1889, p. 1.

<sup>14</sup> Annual Address of the President, in Proceedings of the Seventh Annual Session of the New York State Workingmen's Assembly, 1871.



to the nature of their work. The female branch of the trade is, as a rule, organized in large cities into a separate local union; in small places a mixed union of both sexes is formed. Sometimes, however, when the interests of the male and female branches are very closely interwoven, they are organized together even in large cities. Thus, while the bookbinders have formed a women's union of stitchers in New York City, yet the female stampers of New York are combined with the male gold layers.

When women compete with men for the same work, a mixed local is usually formed in order better to enforce the payment to them of the same wages as men. Thus, in the shirt, waist, and collar factories of Troy the ironers, some of whom are men and some women, are combined into one union. In 1869 the International Typographical Union granted a charter to the female compositors of New York City. After several years' experience, the women were found to be working for a lower wage scale than the male printers; the charter was therefore revoked, and the Typographical Union has never attempted since then to form independent unions of women.<sup>15</sup> One important exception in this connection is the Amalgamated Meat Cutters and Butcher Workmen. Within the last few years women have partly replaced men at some branches of work in the large meat packing houses. The butchers have made no attempt to force the women to join the unions composed of men in each department. On the contrary, the female employees scattered throughout all departments are at Chicago, South Omaha, and other meat packing centers gathered into one large local union known as the "Woman's Union."<sup>16</sup>

The appearance of the negro as an industrial competitor caused another division of the local union in a number of trades. After the close of the Civil War the competition of

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<sup>15</sup> Barnett, *The Government of the Typographical Union*, p. 23.

<sup>16</sup> T. W. Glocker, "The Unit of Government in the Meat Cutters' and Butchers' Union," in the *Johns Hopkins University Circular*, new ser., 1905, no. 6.

the newly emancipated negro was greatly feared by many American workmen. "The negro," declared the president of the Workingmen's Assembly of the State of New York in 1870, "will no longer submit to occupy positions of a degrading nature, but will seek an equality with the whites in the various trades and professions. For a time, we may not have to contend against their labor; and all may be well. Yet I feel impressed with the necessity of preparing for the future by organizing such colored workmen as may now or hereafter exist *into unions by themselves*, and recognizing their organizations. If we discard this element of labor and refuse to recognize it, capital will recognize it and use it to our great disadvantage."<sup>17</sup> Already, indeed, in 1867 the importation of colored ship caulkers from Portsmouth, Virginia, to Boston during the struggle in that city for an eight-hour day had been a practical illustration of the way in which the negro might be used as a strike breaker.<sup>18</sup>

At this time the white mechanics refused consistently to admit colored men into their own local unions; and in very few localities were there enough negroes employed at the same trade to make possible the formation of separate colored unions. Partly through the efforts of the Workingmen's Assembly of the State of New York, three organizations of colored men were formed in New York City in 1870, namely, the Saloon Men's Protective and Benevolent Union, the Colored Waiters' Association, and the First Combined Labor Institute. A Colored National Labor Union was also formed in 1869, and held several annual sessions. This organization aimed to secure higher wages for colored men and to increase the number of occupations in which they could find employment; it gave attention also to the problem of obtaining better school facilities for colored children, and was interested in certain cooperative land and home-building

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<sup>17</sup> Proceedings of the Sixth Annual Session of the Workingmen's Assembly of the State of New York, 1870, p. 15.

<sup>18</sup> Address of the National Labor Congress to the Workingmen of the United States. Chicago, 1867.

schemes.<sup>19</sup> But the desire for political rights and for recognition by the political parties at this time completely filled the minds of the negroes to the exclusion of industrial matters. Their trade associations seem to have degenerated largely into political clubs, and the trade-union movement inaugurated among them during this period met apparently with little success.

At first the international unions of cigar makers, bricklayers, and members of certain other trades absolutely excluded negroes from membership, and a few of them did not remove the ban for many years. Many other international unions, particularly those which have felt the competition of the negroes most keenly, have admitted them freely from the first. The American Federation of Labor refuses to enroll national unions which draw distinctions as to color. In 1891 it forced the International Association of Machinists to admit negroes by countenancing a rival international organization which did not draw the color line. In 1894 the barrier against the admission of colored men was removed by the International Association of Machinists, and in the following year the two rival organizations united.<sup>20</sup>

When the national associations have removed the ban of prohibition, subordinate local unions have frequently refused to admit negroes, and have demanded that they be organized under separate charters. As a rule, distinctions as to color are less frequently made in the North. Shortly after the women in the Chicago meat packing houses were unionized, a colored girl asked admittance to the meeting room. "Admit her," said the president after a moment's silence, "and let every one give her a hearty welcome." Since that time colored women have been freely admitted to membership.<sup>21</sup> In the South, however, where negroes are more numerous

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<sup>19</sup> Circular Issued by the Colored National Labor Union to the Colored Workmen of the United States, Organized in Trades, Labor, and Industrial Unions, Calling for Selection of Delegates, and Outlining Proposed Work of the Second Annual Meeting, Held in Washington, Jan. 9, 1871.

<sup>20</sup> Report of the Industrial Commission, vol. xvii, p. 217.

<sup>21</sup> Official Journal [Amalgamated Meat Cutters and Butcher Workmen of North America], October, 1902, p. 28.

and race feeling is stronger, they are usually formed into separate local unions. In one instance the white carpenters of New Orleans, about 1884, refused to join a local union of the trade affiliated with the National Brotherhood of Carpenters and Joiners because the charter for New Orleans was already held by a few blacks, and at that time the brotherhood refused to grant more than one charter in the same city.<sup>22</sup> Later, the national union of carpenters was forced to amend its laws so as to permit the formation of more than one union in each place; and today over sixteen local unions composed wholly of negro carpenters are to be found in the Southern States.

Friction between nationalities has led to further subdivision of the local union in a good many American trades. The Anthracite Coal Strike Commission found some nineteen nationalities at work in the mines. The employees of the Colorado Fuel and Iron Company include representatives, it is said, of thirty-two nationalities speaking twenty-seven different languages. In the meat packing houses of Chicago, Germans, Bohemians, Lithuanians, Poles, Slovaks, Italians, and Greeks have succeeded one another in bewildering succession. Obviously, to organize each of these many races into separate local unions is frequently impossible, and national trade unions whose members speak many tongues often refuse to attempt it. Resort is had to various expedients in order that business may be transacted. Constitutions, circulars, and other documents are printed in several languages. Interpreters are used at the meetings of the local unions; a recording secretary is sometimes created for each language spoken by the members, and the officers are usually divided among the several nationalities. In a few instances the various races meet in adjoining rooms, and propositions are brought successively before each body. Such makeshifts are inconvenient; and, when race antagonism arises, the only solution is the subdivision of the local.

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<sup>22</sup> Report of the General Secretary, in Proceedings, 1884.

Besides general race antipathy, ill-feeling between nationalities arises in various ways. In the late seventies a union of foreign cigar makers, composed of Cubans, Spaniards, Mexicans, and Italians, with a preponderance of the Spanish element, was formed in New York City. Shortly afterwards, during the public agitation in favor of Cuban liberty, the members began to discuss current political questions, with the result that the local union went to pieces.<sup>28</sup>

From one cause or another, therefore, each of the several nationalities working at a trade demands a separate local union. When, as in the case of the Carpenters or Bricklayers, the trade is only slightly subdivided, separate local unions of foreigners can be readily formed; but in the Amalgamated Meat Cutters and Butcher Workmen and the United Garment Workers, where there are many subdivisions, the problem becomes more difficult. The Butcher Workmen recognize no distinctions as to race or nationality. The United Garment Workers have organized in Chicago a local union of Italians who are employed as pressmen, pants finishers, and coat makers; and when the number of workers in one branch of the trade is great enough to justify further subdivision, differences of nationality are sometimes recognized. Obviously, this process of division is possible only in the large cities.

A local union, though its members compose a comparatively homogenous group, may be divided because it has become too large for good government. If the number of members is too great, the meetings degenerate into mob assemblages, and intelligent discussion of any important question is difficult. Men who advocate a sane and conservative policy are often hissed down. Factions are inevitably created, and threaten by their acrimonious bickerings to disrupt the organization.

Unscrupulous leaders also take advantage of such conditions to establish themselves in power. In the days of Sam

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<sup>28</sup> Cigar Makers' Official Journal, May, 1878, p. 3.

Parks, the walking delegate of the Structural Iron Workers who was sent to Sing Sing Prison for blackmailing employers, there was only one local union of structural iron workers in New York City. The membership was nearly four thousand, and meetings were held in a small hall which seated only a few hundred. Sam Parks built up a small army of followers by using the power which his position gave over employers to secure the jobs as foremen and other choice positions for his favorites. When he desired reelection or needed a vote of confidence, he would order his adherents to come early. The room would be packed with men who voted as he desired, and the other members would fail to find admittance. A somewhat similar condition of things has at times existed in the New York and Chicago unions of bricklayers and in other large local unions in other trades. For example, Local Union of Bricklayers No. 7 of New York City had in 1870 a membership of two thousand, and met in a hall with a seating capacity of three hundred and fifty. There were several factions within the organization, and, in order to secure the adoption of a particular measure, one clique would sometimes pack the hall. In this way a minority in the local union brought about, for a time, the withdrawal of the New York local union from the international union.

The size of the local union is greatly diminished in many organizations by division according to branch of the trade, sex, color, or nationality. For example, in New York City the local union of structural iron workers of Sam Parks's day has been replaced by three unions, one of housesmiths and bridge men, another of inside architectural bridge and structural iron workers, and a third of finishers. But in unions such as the Bricklayers and the Carpenters, where subdivisions according to trade, sex, color, or nationality are unimportant, the local unions are very frequently too large. The international secretary of the Bricklayers has several times proposed to prevent the growth of such large unions by limiting the membership of each local union to five hun-

dred.<sup>24</sup> A rule limiting the membership of each subordinate association to four hundred was adopted by the United Brotherhood of Carpenters in 1886.<sup>25</sup> The provision proved unsatisfactory, however, and it was repealed a few years later. As far, then, as present indications show, the general tendency seems to be not to adopt rigid rules as to size, but to create additional local unions in any community as occasion appears to demand.

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<sup>24</sup> Annual Report of the President and Secretary, for term ending December 1, 1890, p. 47. For a description of conditions in the Chicago local union of bricklayers, see Reports of the President and Secretary, 1886.

<sup>25</sup> Constitution and Rules for Local Unions, 1886.

## CHAPTER III

### THE FEDERATION OF LOCAL UNIONS

During the latter half of the nineteenth century the local societies of organized trades have as a rule been federated into district, state, national, and international unions. The most common form of federal association is the international union with jurisdiction over subordinate societies in Canada and sometimes even in Mexico as well as in the United States. There have been three important causes of the federation of local trade unions: first, the movement of workmen from one city to another; second, the competition between manufacturers in different places; and third, the need of a joint fund for the support of certain trade-union activities.

Probably the chief cause of the federation of local trade organizations has been the constant movement of journeymen from one part of the country to another. This form of labor competition existed, of course, from the birth of American trade unionism, and in 1815 was already a very serious problem to the local societies of printers which had been formed by that date in all the large cities of the Atlantic seaboard. One writer, discussing the movements of the working population in 1847, just a few years before the era of federal unionism, says of the artisan class that they too, like their richer neighbors, "must sometimes change their place. When work is dull in one town, they go to another, and there are thus two streams of workmen perpetually setting between our two great cities, while in a smaller degree a similar circulation is kept up through the whole country. There is also a current of emigrants to the west; and, in this, there is always a considerable infusion of mechanical labor."<sup>1</sup>

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<sup>1</sup>J. W. Alexander, *The American Mechanic and Workingman*, p. 108.



With increased rapidity and decreased cost of railway transportation, labor has become continually more mobile. In nearly all trades there is a class of travelling craftsmen or "tramp" journeymen, mostly young men, who, imbued with the modern spirit of restlessness, travel from place to place, and work for a few weeks or months, now here, now there, as fancy or the hope of larger wages may direct. The amount of this shifting labor is especially large in the building trades, probably because of the intermittent character of the work, and regularly organized gangs move constantly to those localities where building operations are especially active. A few years ago a part of this shifting body of laborers may have been at work on the buildings of the World's Fair in St. Louis. Later, they were employed perhaps on the New York subway. Then, possibly, the building operations in Baltimore's burnt district attracted them; and still later they may have been engaged on the buildings of the Jamestown exposition or upon the reconstruction of San Francisco.

Besides the labor current between the cities, there are smaller eddies from the country and the small towns into the large cities, and vice versa. The union carpenters in large cities for years have complained bitterly of periodic invasions by the "hatchet and saw" carpenters from the surrounding country and the small outlying towns. On the other hand, the photo-engravers in the small towns of New England and of New York State fear the competition of the photo-engravers coming from New York City, who are in great demand on account of their superior skill, and replace, even at considerably higher wages, the poorer resident workmen.

An industrial depression, the introduction of machinery, or any other condition which increases unemployment or decreases the skill required serves to intensify in any trade this interurban competition. About the year 1880 wood-working machinery was introduced in planing mills; and as a consequence the doors, sash, moldings, window-frames,

and other fittings which the carpenter had formerly made by hand in his workshop were now made by machinery in the factory. Consequently, in every large city there was created a small army of idle members of the trade, ready to "scab" in their own or other towns.<sup>2</sup> At the same time the work of the carpenter on a building had been minutely subdivided. For this reason the annual influx of relatively unskilled country carpenters assumed large proportions.

This movement of workmen from one place to another handicaps the local union greatly in its efforts to improve the conditions of employment. Frequently when a local union has succeeded in raising wages above the general level, union and non-union members of the trade in other cities who hear of it rush to the place, and by their underbidding force down wages possibly below their original level.<sup>3</sup> "Take the case of the journeymen tailors," says a writer in 1847. "Suppose this class of operators in Newark to strike for higher wages, and to succeed. Journeymen tailors will be at once tempted to flow from New York, and this influx will be in proportion to the general distress; and secondly, to the amount of increasing remuneration. Of course it will be less than it would be in the case of unskilled labor, such as that of the piecers and pickers in cotton factories, where the vacuum would be filled up almost immediately. The consequence of this transfer of labor is that wages rise elsewhere, and by degrees fall here. After a short time, the proportion is much what it had been; and the general rise of level is scarcely appreciable."<sup>4</sup>

Sometimes local unions engaged in industrial war have discovered unexpectedly that their strike is lost because the employers have been able by advertisements to secure from other cities journeymen who were willing to act as strike breakers. The master printers of New York pursued this policy as early as 1809, advertising in Boston, Philadelphia,

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<sup>2</sup> The Carpenter, October, 1886.

<sup>3</sup> Historical Sketch, in Constitution of the New York Typographical Association of June, 1831, as amended in 1833.

<sup>4</sup> Alexander, p. 127.

and other cities for journeymen to fill the places of the striking members of the New York Typographical Society.<sup>5</sup> Sooner or later in all trades, therefore, the federation of the local societies has been urged as a means of preventing competition for employment between unionists in different cities. In the spring of 1881 the loss of a strike because of the influx of out-of-town workers led the three local unions of carpenters and joiners in St. Louis to agitate for the creation of a national union of the trade. A provisional committee elected by the three local unions began the publication of a journal which was sent broadcast throughout the country as a means of spreading the arguments in favor of a national union. As a result of this campaign, the United Brotherhood of Carpenters and Joiners of America was formed shortly afterwards.<sup>6</sup>

The movement of journeymen from place to place neutralizes the efforts of the independent local societies to control the supply of workers by limiting the number of those learning the craft. For example, a union in Baltimore may enforce the most rigid rules for defining the period of apprenticeship and the number of apprentices to each shop; but if the unions of the craft in Philadelphia and Washington have a lax apprentice system, probably the only result will be that Baltimore will serve as a convenient outlet for the constantly accumulating body of unemployed in both cities. The need of some national regulation of apprenticeship, therefore, has been another cause for the federation of local unions. The adoption of a series of uniform apprentice rules for local societies was an important work of the national conventions of printers which in 1836 and 1837 made an unsuccessful attempt to establish a national union.<sup>7</sup> In the address to journeymen printers, issued in 1851, one argument urged in favor of establishing a national organization was the need of limiting apprentices, "by which meas-

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<sup>5</sup> Bulletin of the Bureau of Labor, no. 61, November, 1905, p. 873.

<sup>6</sup> The Carpenter, May, 1881.

<sup>7</sup> Address to Local Societies by the Convention of the National Typographical Society in 1836. Washington, 1836.

ure, a too rapid increase in the number of workmen, too little care in the selection of boys for the business, and the employment of herds of half men at half wages to the detriment of good workmen would be effectively prevented."<sup>8</sup> The national regulation of apprenticeship was from the beginning an important purpose of the federal unions of iron molders<sup>9</sup> and cigar makers,<sup>10</sup> and a rule limiting the number of apprentices was adopted by the International Union of Bricklayers as early as 1867.<sup>11</sup>

As long as the local societies of a trade are not united, the member suspended for non-payment of dues or for some other violation of the union rules is able to escape his penalty by travelling to another city. There, upon payment of an initiation fee, he will probably be admitted to the union of the locality, and so will be able to find employment. Under such circumstances the threat of suspension loses some of its terror for the delinquent, and much of the coercive power of the union over its members is destroyed. The effective punishment of outlawed members has been an incidental purpose in the organization of federal trade unions. Some years before the rise of a national union the scattered societies of printers exchanged lists of "rats," as offenders against the union were called, and by general agreement all local unions refused to admit such individuals to membership.<sup>12</sup> The address of 1850 to the printers of the United States advanced, as another argument in favor of the establishment of a national union, the possibility of adopting "measures to prevent disgraced members of the profession enjoying anywhere in the United States those privileges which belong exclusively to honor-

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<sup>8</sup> Address Issued by the Convention of 1850 to the Journeymen Printers of the United States.

<sup>9</sup> Constitution, 1864, art. viii, in Proceedings, 1864. See also Proceedings, 1867.

<sup>10</sup> Constitution for the Government of Local Unions, art. ii, sec. 1, in MS. Proceedings of the Second Session of the Cigar Makers' International Union, 1865.

<sup>11</sup> Constitution and Rules of Order, 1867.

<sup>12</sup> See page 104.

able printers.”<sup>13</sup> At an early date the federal organizations of iron molders, bricklayers, locomotive firemen, and many other crafts published in their trade journals, or exchanged by correspondence between the local unions, lists of expelled members whom all subordinate branches were forbidden to admit.

On the other hand, from the point of view of the travelling journeyman some agreement between the scattered local unions of a trade is desirable, in order that he may be admitted more readily to the union of the place in which he hopes to find work. The ardent unionist is often unable to pay the high initiation fee required for membership in the association of the place to which he has journeyed in search of work. Consequently, he turns “scab,” and accepts a much lower wage than he had previously earned, or, if the local union is strong, does not find employment. The address to journeymen printers issued in 1850 declared that “the formation of a national union of printers will relieve the distress of brother craftsmen, incurred in journeying from one place to another in search of work.” “One reason,” says a writer in the *Iron Molders’ International Journal*, “for the formation of a national union was that the right hand of fellowship might be extended to a molder everywhere in his wanderings.”<sup>14</sup> The same idea was also expressed by the delegates who met in 1864 to form the *Cigar Makers’ International Union*.<sup>15</sup> The invariable policy of national associations of admitting members of one subordinate union to all other subordinate unions without an initiation fee has greatly benefitted the “tramp” journeyman, and so also has the system of loans to those travelling in search of work, which some seventeen of the one hundred and thirty or more federal trade organizations in the United States are maintaining.<sup>16</sup>

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<sup>13</sup> Address Issued by the Convention of 1850 to the Journeymen Printers of the United States.

<sup>14</sup> *International Journal [Iron Molders]*, May, 1871.

<sup>15</sup> MS. Proceedings of Convention of the Cigar Makers’ Union, 1864.

<sup>16</sup> J. B. Kennedy, “Beneficiary Features of American Trade Unions,” in *Johns Hopkins University Studies*, ser. xxvi, nos 11-12, p. 96.

exercised no influence upon the formation of such associations.

Not only wages, but the length of the working day, methods of wage payment, and many other items in the contract for employment affect the cost of production. Such abuses as the truck system and the screen system, for example, have been retained even by scrupulous coal operators in order to meet the competition of less conscientious employers who insist upon continuing such practices; and they can be abolished only by the combined efforts of all miners' local unions in the country. Thus, about 1883, one of the districts of Ohio went on strike against the screen system, whereupon the president of the state organization of miners issued a circular ordering the strikers to return to work, since the screen system could be abolished only by the cooperative action of the various state unions.<sup>22</sup>

The desire to secure uniformity in wages, hours, and other conditions of employment which directly or indirectly affect cost of production has been a primary cause for the creation of many national and international unions. In the address to journeymen printers of the United States, issued by the preliminary national convention of Printers held in 1850, "an understanding in the regulation of scales of prices in different localities so that those in one place may not be permitted to become so comparatively high as to induce work to be sent elsewhere" is suggested as one aim of the proposed national union. The Window Glass Workers, when issuing a call for their first national convention in 1874, urged the need of a uniform sliding scale for all window glass factories as the chief reason for creating a national union.<sup>23</sup> The establishment of a uniform rate of wages was a primary aim of the men who formed the New England Boot and Shoe Cutters' Union,<sup>24</sup> the New England Lasters' Protective Association,<sup>25</sup> and the International Boot

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<sup>22</sup> National Labor Tribune, December 1, 1883, p. 5.

<sup>23</sup> Ibid., May 23, 1874, p. 1.

<sup>24</sup> The Laster, October 15, 1890, p. 1.

<sup>25</sup> Ibid., August 15, 1888, p. 1.

and Shoe Workers' Union, though such uniformity has not been attained even at the present day.

Uniform regulation of the terms of the labor contract was the chief reason for the formation of district federations by the anthracite coal miners of Pennsylvania<sup>26</sup> and by the bituminous miners of western Pennsylvania. The latter district included all collieries situated upon railroads or rivers by which coal was brought to the Pittsburg market. The Miners' National Association, formed in 1873, made no attempt to maintain uniform conditions of employment, since at that time each coal district had its own exclusive market, and mines in one district did not compete with those in another. The market for coal soon became national, however, and the abolition of the screen system of wage payment and the establishment of an eight-hour day and other rules of employment were stated as leading purposes in calling the national convention of the trade in 1880<sup>27</sup> and 1883.<sup>28</sup> Moreover, the creation of a permanent, stable national organization among the miners really dates from the first joint conference of miners and operators which in 1886 drew up the first joint wage scale for the bituminous coal fields of Indiana, Illinois, Ohio, Pennsylvania, West Virginia, and a small section of Iowa.<sup>29</sup>

The miners have sometimes attempted to limit the output of coal in the hope that by raising its price they would secure higher wages from employers. To be effective, the output of all competing collieries must be limited, and for this purpose the several county associations of the anthracite coal miners of Pennsylvania federated together about 1869. A National Nut Coal Restriction Convention was called in 1880, but it failed in its aim because certain state associations in the Middle West refused to cooperate.

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<sup>26</sup> The county associations among the anthracite coal miners grew out of an attempt to establish an eight-hour day at all competing collieries (First Annual Report of the Bureau of Statistics of Labor and Agriculture for the Commonwealth of Pennsylvania, 1872-3).

<sup>27</sup> National Labor Tribune, March 27, 1880, p. 1.

<sup>28</sup> Ibid., May 26, 1883, p. 5.

<sup>29</sup> See page 101.

Similarly, the regulation of the pro rata production of glass throughout the United States was enumerated as one of the purposes for calling the first national convention of window glass workers in 1874.<sup>80</sup>

A third important reason for the federation of local societies has been the need of a joint fund from which to pay strike, sick, death, disability, and out-of-work benefits. Such a joint fund has been greatly needed to support the members of a local union involved in a strike. If a strike has behind it the financial resources of all the local unions of a trade, amounting perhaps to a hundred thousand dollars, it has obviously much more chance of success than when supported by only one local union with perhaps fifteen hundred dollars in its treasury. With a hundred thousand dollars instead of fifteen hundred dollars to draw upon, the members involved in a difficulty with employers can be supported for a much longer time. "Scabs" can also be bought off and kept from taking the places of the strikers.

The need of a central strike fund was urged as a reason for calling the first national convention of window glass workers in 1874.<sup>81</sup> The same argument was advanced by the committee of the St. Louis local union of carpenters which brought about the formation of a national union of the trade in 1881.<sup>82</sup> Both the National Typographical Society of 1836 and the national convention of journeymen printers held in 1850 urged that the several societies of the trade cooperate to aid local unions involved in strikes. Indeed, the payment of strike benefits has been recognized very generally as an important function of national trade unions, but the system has been very slowly established by the workers in those industries where the size of the es-

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<sup>80</sup> National Labor Tribune, May 23, 1874, p. 1. The national associations of both window glass workers and flint glass workers have pursued the policy of suspending work in all factories during a portion of the summer months, partly in order that necessary repairs may be made during the hot season, but largely in the hope of securing steadier employment at higher wages during the winter months.

<sup>81</sup> National Labor Tribune, May, 1874.

<sup>82</sup> The Carpenter, May, 1881.



tablishment is small and hence where a strike involves only a small part of the membership of a local union. For this reason a joint strike fund was not created by the Printers until 1885, notwithstanding that a resolution favoring the maintenance of such a fund was adopted at the first national convention. The small local unions demanded repeatedly during this interval that they be aided by the international union in their struggles with employers, but the large local unions, who were better able to finance their own strikes, always opposed the plan. For the same reason the amounts contributed to local unions from the treasuries of the national unions of the building trades have been inadequate, and strikes have been largely supported from local funds. With the rise of employers' associations in the building trades and in the printing industry, however, strikes not infrequently involve nearly all the members of a local union, and to maintain them the local union must receive financial help from the international union.

The payment of sick, death, or out-of-work benefits from the federal rather than the local treasury is urged for two reasons. In the first place, when each subordinate union maintains its own system of benefits, a member forfeits the right to enjoy them whenever he travels to another city in search of work, for even if the union in the city to which he journeys does pay benefits of identical amounts and character, a new member must usually be a member for six months or a year before he becomes entitled to receive them. In the second place, only the large local unions are able to maintain systems of benevolent relief. A single death during the first year would probably bankrupt the small union of ten or twenty members.

Insurance against death and accident has always been an important feature of all railway unions because of the high premiums charged railway employees by the insurance companies, and undoubtedly the desire for a national system of insurance exerted some influence upon the formation of national organizations in certain branches of the service.

The Grand Division of the Order of Railway Conductors, for example, formed a mutual insurance association at its first convention in 1868. The Order of Railroad Telegraphers was organized in 1886 as a purely benevolent national association, and continued as such until 1891, when its laws were so amended as to make it also an industrially protective union.<sup>83</sup> The present international organization of railway firemen was preceded by the International Firemen's Union, whose sole function was to promote collective bargaining. Many lodges desired the adoption of a system of national insurance; and as the leaders of the old association refused to accede to their demands, some of them seceded in 1874 to form the present Brotherhood of Locomotive Firemen, which has benevolent as well as industrial aims.<sup>84</sup>

The desire to pay sick, death, and out-of-work benefits has, however, exerted relatively little influence upon the creation of district, state, or national unions. In fact, with the exception of certain railway brotherhoods, none of the early federal associations adopted systems of benevolent relief until some years after their formation. Although the Iron Molders' International Union was organized in 1859, its first beneficiary feature—the payment of a certain sum upon the death of a member—was not adopted until about 1878.<sup>85</sup> The Cigar Makers' International Union was organized in 1864. In 1873 the so-called endowment plan for the relief of widows and orphans was inaugurated, but proved a failure and was abandoned a year later. Not, indeed, until 1880 were the sick and death benefits which are today such important features of the organization permanently established.<sup>86</sup> Moreover, sixty-two out of one hundred and thirty-four national and international unions are

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<sup>83</sup> American Federationist, September, 1902, p. 621.

<sup>84</sup> The history of the struggle between the two international associations of locomotive firemen can be traced in the contemporary numbers of the Locomotive Firemen's Magazine, vols. i and ii, December, 1876–November, 1878.

<sup>85</sup> Constitution and Rules of Order, 1878.

<sup>86</sup> Journal and Program of the Twentieth Convention, 1893, p. 53.

not maintaining any form of benevolent relief at the present time.

Before local societies began to federate into national and international trade unions there was a long period of groping and experiment during which the scattered societies endeavored to cooperate by correspondence. Many years prior to the formation of a national association of the trade the union hatter who left Danbury, Connecticut, in search of work at some nearby town bore with him a travelling card, which by agreement entitled him to membership in unions of hatters in other places without the payment of an initiation fee. So also today, though the local unions of female hat trimmers have not yet federated, one local union of hat trimmers recognizes the card presented by the member of a sister society.

The early associations of printers were very successful in their efforts to cooperate with one another. In the first place, by means of an active correspondence, union printers were prevented from flocking to cities where members of a sister society were engaged in a strike. When in 1809, for example, the master printers of New York advertised in other cities for journeymen, offering good wages and permanent positions, the New York Typographical Society wrote to the other organizations in the trade that its members were on strike for higher wages, and that the purpose of such advertisements was "to fill the city with hands, and thereby reduce the prices of work in this city to their former standard." In 1810 the Philadelphia society notified the New York organization in its turn that its members were about to strike in order to enforce a new wage scale. In response, the New York union called a special meeting, and all present agreed by resolution not to take "any situation vacated by any of our brethren in Philadelphia under the present circumstances." Again, on the eve of a strike in 1816 the Boston Typographical Society sent a letter to all printers' unions in the country requesting that members of

the trade in other cities should not come to Boston in answer to advertisements for journeymen, and so endanger the success of the strike. The blacklist of suspended or expelled members kept at the present day by most national and international unions had its prototype in the list of "rats" or outlawed members exchanged by these early associations of printers.

The independent printers' societies attempted also to bring into uniformity the scales of wages paid in different cities.<sup>87</sup> In 1815 the master printers of New York opposed the demand of their journeymen for higher wages on the ground that the resulting increase in the cost of printing would lead the New York booksellers to have their work done in places where wages were lower. Thereupon the New York society appointed a committee to induce the journeymen of other cities, and of Philadelphia and Albany in particular, to raise their wages to the level of the New York scale. Probably in part through the efforts of this committee a higher scale of wages was adopted within a short time by the Albany union. The wages of printers employed on government work in Washington were higher than those paid in other cities, and in consequence, during the sessions of Congress, Washington became the Mecca of "tramp" printers from all sections of the United States. The Columbia Typographical Society of Washington desired, therefore, that wages be uniform in all parts of the country. In 1815 the society adopted a "list of prices similar to that in Baltimore in order that wage conditions might be brought into uniformity with those existing in the nearest important city."<sup>88</sup>

The establishment of a central organization to carry out more effectively the activities which the local unions had

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<sup>87</sup> In 1806 the scale of wages for union boot- and shoemakers was the same in Baltimore, Philadelphia, and New York, but apparently no definite agreement to maintain such uniformity existed between the associations of the trade in the three cities (Trial of the Boot and Shoemakers of Philadelphia on an Indictment for a Combination and Conspiracy to Raise their Wages. Philadelphia, 1806. P. 51).

<sup>88</sup> Bulletin of the Bureau of Labor, no. 61, November, 1905, pp. 836-1033.

maintained with partial success by correspondence was an easy step, and the printers' societies which had corresponded so vigorously were naturally the first to take the step. Indeed, the New York Typographical Society is said to have proposed a confederation of local printers' organizations as early as 1816; but concerning the truth of this statement nothing definite is known. Correspondence between the printers' societies practically ceased during the suspension of their trade activities from 1818 to 1828;<sup>39</sup> but after 1828, when the Printers grew aggressive and attempted to bargain collectively, cooperation between the societies began again, and this cooperation soon led to suggestions for a closer alliance. In 1836 a "union of societies" known as the National Typographical Society was formed to carry on the various activities hitherto inadequately maintained by correspondence, but this federal organization died within two years. Undoubtedly other trades attempted about this time to form national unions. Thus, at a meeting of the Journeymen House Carpenters' Association of Philadelphia, in 1836, a resolution was adopted "that a National Convention of Carpenters be called to meet at Philadelphia on the fourth Monday of October ensuing."<sup>40</sup> But after the utter prostration of the labor movement in the panic of 1836, attempts to form national unions were discontinued.

The period of railway construction brought about a great industrial change toward the middle of the century. Lines of railroad now spanned many sections of the country, and in general the means of communication by land and water had been greatly developed; in consequence the mobility of labor had increased, and goods sought a market of ever widening territorial extent. Hence the need of national collective bargaining became more imperative, and after 1850 the number of national trade unions steadily increased. If, therefore, the first half of the century is styled the period of local unionism, the second half may by contrast be called the

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<sup>39</sup> G. E. Barnett, *The Printers*, in *American Economic Association Quarterly*, ser. 3, vol. x, no. 3, p. 21.

<sup>40</sup> *The Washingtonian*, October 17, 1836.

period of national or federal unionism. Trades which had been most active in the labor movement of the first half of the century naturally took the lead in the creation of national associations. The Printers renewed the effort made in 1836, and after two preliminary conventions formed the National Typographical Union, the first permanent federal trade union in the United States. The example of the Printers was followed within a couple of years by the Hatters and by the members of a few other trades which had been foremost in the creation of local unions during the early part of the century.

Workers in the textile, iron and steel, glass, and other industries which had scarcely existed or which remained unorganized during the early period now began to form local societies, and in those where the product had a wide territorial market the creation of national associations followed almost immediately. Thus, the Philadelphia union of glass blowers, probably the first local organization in the trade, began almost immediately after its formation in 1848 to encourage the establishment of unions in other places with a view to forming a federal association. The new local unions joined in turn with the Philadelphia union in sending members to organize glass blowers in nearby communities. When a sufficient number of local unions had been formed, a general convention was called, and the Grand Union of Glassblowers was created in 1858.<sup>41</sup> Similarly, the so-called local "forge" of iron puddlers, known as the Sons of Vulcan, which was organized at Pittsburg in 1857, was quickly followed by the National Forge of the United Sons of Vulcan in 1860.

Many of the national unions formed in the United States during the last fifty or sixty years went to pieces after a brief existence. Very few of the present federal organizations are the first to have been formed in the trade. Frequently they have been preceded by several ephemeral associations which have sometimes been completely forgotten.

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<sup>41</sup> J. C. Simonds and J. T. McEnnis, *The Story of Manual Labor in all Lands and Ages*.

by the present generation of workmen. Concerning them, inquiry fails to reveal any information save a casual, often vague, reference to their creation at a certain date. Only fifteen national unions out of forty-three known to have been formed between the years 1850 and 1880 have survived until the present day.<sup>42</sup> The twenty-eight national unions which have perished embraced twenty-one distinct trades. In five trades there was more than one attempt to form a federal union during this period.

The workers in the building trades have had greater difficulty than some other classes of workers in maintaining permanent national unions. The International Union of Bricklayers and Masons has, indeed, been able to maintain a continuous existence from its formation in 1866, and the Soft Stone Cutters and the Granite Cutters have been equally successful. Other members of the building trades, such as the Carpenters, the Painters, the Plumbers, and the Plasterers, have been less fortunate. The Carpenters made two unsuccessful efforts to maintain a national union before the present organization was finally established in 1881.<sup>43</sup> Five unsuccessful attempts were made by the Painters.<sup>44</sup> The present association of plumbers, gas fitters, steam fitters, and steam fitters' helpers was preceded by an earlier organization known as the International Association of Journeymen Plumbers, Steam Fitters, and Gas Fitters, which ceased to exist about 1888. There was also a national union of plasterers in 1866, which became apparently extinct after a short life.

The great difficulty which the building trades have experienced in maintaining national unions may be ascribed partly to the fact that in these crafts collective bargaining is

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<sup>42</sup> Of these fifteen, some have lost their identity by amalgamation with national unions of related trades, others have split into two or more separate associations. Most of the remainder have changed their names once or several times. Few claim jurisdiction over the same class of members as in the beginning.

<sup>43</sup> The Carpenter, October, 1886. See also G. E. McNeill, *The Labor Movement*, p. 355. See also *International Journal* [Iron Molders], October, 1866, p. 214.

<sup>44</sup> The Carpenter, February, 1882. See also McNeill, pp. 386-388.



conducted locally. The functions of the central organization have been strictly limited, and they have in consequence been loose decentralized bodies which any serious repulse in the struggle with employers is likely to disrupt. Even the exceptions which have been cited prove the rule. The International Union of Bricklayers and Masons, though it has held together nominally from the date of its foundation, has barely escaped dissolution at various times, and during the two years from 1878 to 1880 the regular convention was not held, and the union gave little or no evidence of life. Special conditions have rendered the maintenance of a federal organization of greater importance to the stone cutters than to the members of other building trades. In the first place, the granite cutters and the soft stone cutters, unlike the workers in other building trades, are not producing an article intended primarily or solely for local consumption, since soft stone, as well as granite, is often cut into finished shape at the quarry or some central stone yard, whence it is sent to other places. These trades have therefore found desirable the uniform regulation of the conditions of employment. Moreover, the stone cutters are an extremely mobile body of workers. The construction of some great public work, a dam or a public building, may gather together a large number of them for a few months or even years. When the work is complete, not a single stone cutter may be left in the place.

Industrial depressions have been the chief cause of the dissolution of federal trade unions in the United States. The union men who are thrown out of employment feel themselves unable to pay their dues, and so are suspended from the trade organizations; or, what is worse from a union point of view, many of them, demoralized by unemployment, lose faith in the system of collective bargaining and stand ready to take the places of their fellow-workmen at a wage far below the union scale. To add to the demoralizing influence of the depression, many trade unions, utterly unmindful of the rapidly thinning ranks of organ-



ized labor and of the hundreds who are vainly seeking employment, rush into strikes against reductions in wages. The strike is lost, the funds of the association are exhausted, the men replaced by others join the mass of the unemployed, and the association goes to pieces. The national unions show the effects of the depression more quickly than the local unions, since the strike funds of the national organization are the first to be exhausted, and the local unions which survive the first blast of the industrial storm abandon allegiance to the now impotent central association, and strive to fight on alone. After the depression, the local unions which had dissolved begin to reorganize, and these, together with the survivors, unite again into federal associations.

The depressions which have affected the industries of the United States at periodic intervals divide the history of district, national, and international associations into several stages. The first of these extends from the formation of the National Typographical Union in 1852 to the Civil War, and may be called the experimental period of federal trade unionism. Some five trades—those of the printers, iron molders, stone cutters, machinists and blacksmiths, and hat finishers—succeeded in establishing national associations, more or less permanent in character, though indefinite in purpose and function and very loosely hung together. Unsuccessful attempts to form such central unions were made in this period by the carpenters, locomotive engineers, painters, brushmakers, cotton mule spinners, and glass blowers. The Civil War, with its uncertainties and its interference with the means of communication, paralyzed the federal unions then in existence. After Black Friday of 1861 nearly all of the national unions formed during the preceding ten years went to pieces. Not a single labor organization held a national convention during the year 1862.<sup>45</sup> The Iron Molders' Union of America, which had started on its career so auspiciously in 1859, practically did not exist

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<sup>45</sup> Iron Molders' Journal, April, 1878.

from the middle of 1861 to January, 1863. Many local unions of iron molders collapsed completely during this interval; some adjourned for six months or a year. The few that managed to maintain themselves were not in condition to call a convention. With the revival of business, however, the few societies of the trade which survived found themselves unable to take advantage of the industrial improvement because of the unorganized condition of the molders in other cities. The first impulse of the local union in Philadelphia was, therefore, to call a federal convention at Pittsburg in January, 1863, but the reorganized national association embraced only fourteen local unions as compared with the forty-three belonging to the union in 1861.

The feverish industrial activity which characterized the period from the close of the Civil War to the panic of 1873 is marked by a correspondingly rapid growth of the labor movement. Local unions were quickly organized by the coachmakers, tailors, carpenters, plasterers, painters, boiler-makers and ship builders, glass blowers, boot- and shoemakers, locomotive engineers, railway conductors, coopers, cigar makers, and members of other trades, and these local unions united into federal associations. One unionist, writing in a trade journal about this time, ventures to predict that in a few years every trade in New York City will be holding its national convention. "There is no reason," says another writer, "why a convention of workmen of any trade or calling should not be able to improve their condition and forward their interests by assembling at least once a year to give expression to their sentiments upon the various questions of importance brought before them. Lawyers, doctors and merchants do it,—why not the workmen?"<sup>46</sup>

Then came the crash, the panic of 1873, and many of the associations which had been formed disappeared. Prior to the panic the Knights of St. Crispin, a national organization of boot and shoe workers, alone had a membership estimated at seventy thousand. Two years later it embraced

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<sup>46</sup> International Journal [Iron Molders], September, 1866, p. 185.

two thousand members, and soon afterwards went to pieces entirely. The total membership of all federal trade unions was estimated in 1875 at only one hundred thousand, distributed among the several associations about as follows:—

Miners .....	35,355
Locomotive Engineers .....	12,000
Printers .....	10,295
Machinists and Blacksmiths .....	8,000
Iron Molders .....	7,500
Coopers .....	5,000
Cigar Makers .....	5,000
Sons of Vulcan .....	4,000
Tailors .....	2,800
Miscellaneous (Bricklayers, Plasterers, Painters, Hat Finishers, Shoe Workers, Horseshoers, Locomotive Firemen, Mule Spinners, and Weavers).....	10,000
Total .....	99,950

After 1875 the Miners' National Association, with its membership of thirty-five thousand, collapsed completely, as did also the federal unions of tailors, shoemakers, plasterers, painters, and others in the above list. In 1877 the total membership of all national unions probably fell short—perhaps considerably short—of fifty thousand. Only the federal organizations of locomotive engineers, locomotive firemen, iron and steel workers, iron molders, printers, cigar makers, bricklayers, and perhaps those of one or two other trades lived through the period of hard times from 1873 to 1878.<sup>47</sup> The Iron Molders' Union, which had learned much from its experience during the storm and stress of the Civil War period, emerged from the hard times showing comparatively little ill effect. Its membership had been only slightly depleted, and in 1876 a balance still existed in the treasury.<sup>48</sup> "The Iron Molders' Union," says a contemporary account, "alone of all protective unions can be said to be really carrying out the work that its name implies. It is weakened, but is still keeping up the fight."<sup>49</sup> The Printers suffered more severely, but their union was in moderately good condition in 1877. Another antebellum asso-

<sup>47</sup> Cigar Makers' Official Journal, December, 1877, pp. 2, 3.

<sup>48</sup> Report of the President, in Proceedings, 1876.

<sup>49</sup> Iron Molders' Journal, February, 1877.

ciation, which was composed of iron puddlers, had united with other trades in the industry to form the Amalgamated Iron and Steel Workers in 1876, and this amalgamation was prospering. Two trades organized after the Civil War—the locomotive engineers and the locomotive firemen—were maintaining comparatively strong associations. The Cigar Makers' International Union had, however, almost completely collapsed. The Bricklayers struggled on with little vitality for several years after the revival of industry, and practically did not exist from 1879 to 1881.

From about 1878 to the depression of 1893 the number of national and international trade unions steadily increased. Many trades which during the earlier period had been unable to maintain permanent federal unions now succeeded in establishing them. Other trades not hitherto unionized began to form local unions in many places, and these were united rapidly into federal associations. Industrial conditions were on the whole favorable, since the industrial depression lasting from 1882 to 1885 was slight compared with its predecessor, and exercised but little deterrent influence.

Although the phenomenal growth of the Knights of Labor, an organization which ignored the existing national associations and sought to unite lodges of a manifold variety of trades in one vast federation, misdirected for a time the energies of the labor movement, it also did much to popularize and stimulate it. Moreover, while many of its local and national trade assemblies maintained bitter jurisdictional disputes with existing national associations, other national trade assemblies were formed in trades previously unorganized, or organized only in a few scattered localities. A number of the international associations existing at the present day originated as one of these national trade assemblies. After the decline of the Knights of Labor they seceded to form independent unions. The present National Brotherhood of Operative Potters, for example, was created in 1890 by the secession from the Knights of Labor of the potters constituting District Assembly No. 160. The In-

ternational Brotherhood of Bookbinders is the successor of National Trade Assembly 230. The present international organization of carriage and wagon workers was preceded by the Carriage and Wagon Workers' Trade Assembly No. 247, and the United Garment Workers by District Assembly No. 231.

The increase of federal trade unions was again abruptly checked by the panic of 1893, but the effects were not so disastrous as those of the panic of 1873. Many unions suffered severely from loss of membership, but very few were dissolved. A number of the more centralized associations emerged almost unhurt from the period of hard times. The executive boards of these associations, vested with control over the strike policy of the constituent societies, restrained the local unions from rushing blindly into useless conflicts. During this interval, when the activities of the central associations in collective bargaining were largely in abeyance, the subordinate unions were kept faithful to their allegiance by sick, death, and other benefits.

The years following the depression of the nineties have been prosperous ones in the annals of trade unionism, and have witnessed an unparalleled growth of national and international organizations. Over one hundred and thirty of these associations, most of them possessing jurisdiction over local unions in all parts of North America, are now in existence. Of these, about fifty made their appearance during the years from 1896 to 1905.

The American Federation of Labor, which displaced the Knights of Labor, has been active in forming national and international trade unions. A loose confederation, created and controlled by the existing national unions, it has not, like the Knights, aroused conflict and antagonism. In 1905 one hundred and eighteen of the one hundred and thirty national and international unions belonged to the Federation. Moreover, the number of national associations is being constantly swelled through the efforts of paid agents maintained by the American Federation of Labor. These agents are contin-

ually organizing local unions among the non-union workers in various industries and welding them together into international trade unions.

The influence of the American Federation of Labor has also tended to hasten materially the transition from local to national unionism. Formerly, local unions of a trade existed usually for some years before they were federated, often reluctantly, into national and international associations. Under the influence of the American Federation of Labor the organization of a federal union has sometimes followed almost immediately the appearance of local unions in the craft. When only a few isolated local unions exist in any trade, usually each of them holds a charter direct from the American Federation of Labor; but as soon as enough of these societies have been organized, they are federated into a national or continental union. When, however, the immediate creation of a federal association seems urgently desirable, a national charter is sometimes granted to a single local union, perhaps the sole existing one in the trade, or to a group of promising leaders of the craft. With the assistance of paid organizers of the American Federation, fellow-craftsmen in all parts of the country are induced to form local unions. Soon a convention of representatives from these newly created local societies is held, a framework of government is established, and a full-fledged national or continental association emerges. In only a few trades are the local societies still disunited.

## CHAPTER IV

### THE AREA OF FEDERATION

As a rule, the first federal association formed by the local unions in a trade has been national or international in name and in the proposed extent of its jurisdiction. The national or international associations in a few trades have been preceded, however, by state or district unions. Thus in 1863, some years before the rise of the Coopers' International Union, the coopers of New York formed a state association known at first as the Grand Society and later as the Central Union of New York. When the International Union was organized about 1870, the Central Union of New York, recognizing the greater utility of the wider federation, dissolved at once, and its constituent local unions affiliated themselves with the International Union.<sup>1</sup> The glass bottle blowers were for some years divided into two district unions, one composed of local unions east of Pittsburg and the other of societies west of the Alleghany Mountains; this division was necessary, it is said, because of the expense of sending delegates such long distances. The need for national regulation of the terms of the labor contract led finally to the consolidation of the two districts.<sup>2</sup>

Federal associations confined in jurisdiction to New England have been formed by the workers in a few industries localized largely in that part of the country. The first federal union of mule spinners, formed in 1858, embraced only local organizations of the trade in New England.<sup>3</sup> The federal unions established by boot and shoe lasters in 1885 and by boot and shoe cutters in 1887 had a similar limited

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<sup>1</sup> Coopers' Monthly Journal, October, November, 1870, pp. 4, 5.

<sup>2</sup> Simonds and McEnnis, pp. 629-635.

<sup>3</sup> Constitution and General By-Laws of the United Operative Mule Spinners of New England, Benevolent and Protective Association. Fall River, 1858.

territorial jurisdiction.<sup>4</sup> Local unions of cutters and lasters in other parts of the country asked for admission to these associations, but were refused for several years on the ground that before the jurisdiction was further widened, branches should be established in the unorganized shoe centers of New England. The real reason as now stated by men prominent in these early federations was that the New England lasters and cutters had little to gain by an alliance with members of the trade in other parts of the country. For many years an overwhelming percentage of shoes made in this country were manufactured in New England. Gradually, factories were established in other parts of the country, but the New England manufacturers were still able, notwithstanding the handicap of the additional expense for transportation, to compete in the home markets of these new factories, and if they could not do so, both employers and workmen were very loath to admit their inability. On the other hand, as skilled lasters and cutters were scarce in the Central Atlantic States and the Middle West, a higher rate of wages was paid in the new factories than in New England. The constant influx of workers from the older shoe centers gradually tended, however, to depress these higher wages, so that the cutters and lasters of the Central Atlantic States and of the Middle West were very desirous to protect themselves by federating with their fellow-craftsmen in New England. By 1890 both the lasters and the cutters had widened the jurisdiction of their organizations to include local societies of the trade in any part of the United States.

Among the coal mine workers, district or state unions preceded the formation of national and international associations. Of one great national union there was at that time little need. During the early period of coal mining little or no competition existed between coal operators in different districts. Each coal field or group of adjoining coal fields supplied different markets. Thus, roughly speaking, the anthracite regions of Pennsylvania and the bituminous fields

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<sup>4</sup>The Laster, August 15, 1888, p. 3.



of western Maryland sent their coal chiefly to one of the large seaport cities of the Atlantic coast,—Baltimore, Philadelphia, or New York. The bituminous coal of western Pennsylvania was sent to Pittsburg, whence the surplus not consumed in local industries was, together with the product of eastern Ohio and West Virginia, shipped down the Ohio River to Cincinnati and to points on the lower Mississippi. Coal from the valleys of northern Ohio and from Indiana and Illinois found its way to one of the ports on the Great Lakes. Each district association was able, therefore, to regulate the wages of its members, their hours, and other conditions of employment irrespective of conditions prevailing in coal fields outside its jurisdiction.

On the other hand, since the miners have been a migratory body, mining in Pennsylvania in spring and fall the coal sent down the rivers and in Ohio in summer the coal transported by the Great Lakes, a national travelling card, recognized at all union collieries of the country, has always been regarded as a need.<sup>5</sup> From the beginning a national strike fund has also been greatly desired; but in coal mining, wages constitute such a large part of the cost of production that the equalization of the terms of the labor contract for all competing operators has been of prime importance, and other activities of federal unions of the workers have sunk into comparative insignificance.

About 1860 we find the miners in each coal field or group of competing coal fields organized into district associations. The creation of national unions was attempted, indeed, from the beginning; but, until 1885, when competition began between coal operators in all parts of the United States, the efforts to weld together the various district associations into

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<sup>5</sup> No system of apprenticeship exists among the coal miners. The workers have been recruited from the great mass of shifting, unskilled labor, from farm hands who crowd into the mines during the winter months and compete successfully for employment with the professional miners, from the Slavs and other European immigrants who are now replacing the native Americans in the collieries, and from the children employed about the mines, such as the door boy, the fan boy, and the breaker boy, who rise by successive steps even to the job of fire boss.

one closely knit federation invariably failed. The first national organization concerning which we have definite information was the American Miners' Association. No permanent machinery of government was created for this central association, and except for the maintenance of a national travelling card, recognized in all districts, it had no real functions. Each district union was practically independent and had no connection with other district unions save to recognize the cards borne by their members. The American Miners' Association went to pieces amid the strikes of 1867 and 1868. The National Miners' and Laborers' Benevolent Association, which appeared about 1871, resembled its predecessor in that it possessed no funds, no machinery of government, no real functions. Each district was again practically an independent association.

The idea of welding the various district unions into one firmly unified federal organization was conceived by John Siney, who had risen into prominence during the early movement in the anthracite region. As a result of efforts made by him, the Miners' National Association was formed in 1873.<sup>6</sup> This organization, unlike its predecessors, was more than a mere name. A central strike fund was established; conventions made up of delegates from the district unions were held yearly; and permanent paid officers, who established the headquarters of the national union at Cleveland, were elected.<sup>7</sup> But the Miners' National Association had only a brief existence. It reached the zenith of its power in 1875, and went to pieces in that year after a series of disastrous strikes. During the decade following the disappearance of this association no national union of coal workers existed. Two unsuccessful attempts were made to establish one, but neither of the proposed associations was formed. Meantime the miners were busily engaged in strengthening their state and district unions.

Gradually the development of the great railway systems

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<sup>6</sup> National Labor Tribune, November 21, 1873, p. 4.

<sup>7</sup> First Annual Report of the Bureau of Statistics of Labor and Agriculture for the Commonwealth of Pennsylvania, 1874, pp. 532-537.

of the country and the growth of transportation facilities upon the Great Lakes were bringing all the bituminous coal fields of the United States into competition with each other. For example, part of the coal of western Pennsylvania was now sent from Pittsburg to the East, where it competed in the tide-water markets with the output from the mines of Maryland, West Virginia, and central Pennsylvania. Part was sent to Cleveland, whence, together with the coal from northern Ohio, it was transported by way of the Great Lakes until it met in competition the coal of the States to the northwest. Part was shipped down the Ohio and Mississippi rivers, competing with the coal of southern Ohio, Iowa, Indian Territory, and other States to the south and west. "Circumstances at the time of the formation of the Miners' National Association," wrote the secretary of the Coal Miners' Beneficial and Protective Association of Western Pennsylvania in 1883, "were not so favorable to the creation of an interstate federation as they are now; the facilities for transportation were not so highly developed, and competition from distant territories was less to be feared. Now the coal producing districts are indirectly, if not directly competitors to the farthest extreme, and though the coal fields of two states may have different markets, there is always some territory with which both compete in common; and the indiscriminate cutting of prices in one region is often followed by reductions in distant places."<sup>8</sup>

Keenly alive to the changed conditions, the presidents of the several state associations issued in September, 1885, the call for the interstate convention which gave birth to the National Federation of Miners and Mine Laborers. "Local, district and state organization," declared the preamble to the constitution of the new national union, "have done much towards ameliorating the condition of our craft in the past; but today neither district nor state unions can regulate the markets to which their coal is shipped. We know this to our sorrow. In a federation of all lodges and branches of

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<sup>8</sup> National Labor Tribune, January 13, 1883, p. 5.

miners' unions lies our only hope." Ever since 1885 a loose national federation of miners has existed, though it has threatened sometimes to break apart into the constituent district unions.

The district unions did not always disappear upon the formation of a national union in the trade. On the contrary, they have been retained by the national organizations as important governmental units. The primary purpose of the district unions in forty-two out of eighty-five trades which provide for them in the constitution of their federal associations is to render the conditions of employment uniform throughout the territory over which they have jurisdiction.<sup>9</sup> When the competition between employers is not national but is confined to a limited area, such as a single city, a group of adjacent towns or cities, or a wider stretch of territory, district unions corresponding to such limited competitive areas are needed to equalize wages and other conditions of employment. For this reason Carpenters, Bricklayers, Barbers, Bill Posters, Hotel and Restaurant Employees, and other unions with local markets have formed district unions to unite the several societies of the trade in the same or adjacent places.

Even though the market for a commodity be national, regulation of the conditions of employment by the district union may be necessary, since differences in cost of living, cost of raw materials, interest on capital, and methods of production may render uniform regulation for the entire country impracticable. Moreover, even when the terms of the labor contract are fixed nationally, detailed supplementary regulation by the district unions is often necessary. Thus, during the existence of national agreements between the Iron Molders and their employers from about 1891 to 1904, the Iron Molders' Conference Board of New York and Vicinity maintained supplementary agreements with

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<sup>9</sup> Undoubtedly district unions exist in some of the trades whose international associations make no provision for them in the constitution, as, for example, in the Bridge and Structural Iron Workers who have formed the District Council of Housesmiths and Bridgemen in New York and Vicinity.

employers, which did not conflict, however, in their terms with either the national agreements or the rules of the international union.

Another purpose of the district association is to unite all those local unions which will be affected by a strike. The strike of locomotive engineers on one part of a railway system affects all other engineers on that system. The strike begun in one establishment is likely to spread to other industrial establishments in the same city. As a rule the district union unites the workers who are liable to be included in a strike, and, therefore, its consent must usually be obtained before a conflict with employers can be begun. Even when there are no district unions, some national associations require that the consent of all local unions in a community be obtained before any one of them is permitted to strike.

Many district associations maintain a joint fund for the payment of strike benefits or the support of business agents and other officials. Thus, since no one of the local unions of cotton mule spinners in Rhode Island was able to pay the salary of a business representative or occupy his time completely, they have all united into a state association to maintain jointly a paid agent. It is quite common in the building trades for a single official to serve as business agent for all local unions represented in the council of the district union. Nine of the eighty-five international organizations which require the formation of district unions provide that each of the district unions shall maintain a business agent, and two of the nine contribute one half of his salary.<sup>10</sup>

Frequently administrative and judicial functions of the international unions are delegated to the officers of the district unions. Because of their familiarity with the district these officials are able to perform such duties very efficiently. Thus in thirty-three out of eighty-five associations the officials of the district unions are required to make some attempt at conciliation before the application of a local society for strike benefits may be submitted to the international organ-

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<sup>10</sup> The Blacksmiths and Helpers and the Machinists.

ization. This intermediation by an outside party not embittered by participation in the dispute leads to the peaceful settlement of many petty grievances, and also saves the international officers from journeying to the locality in order to adjust the difficulty. When a strike has been declared, district officials, the joint executive committee, or a specially appointed committee for the district assumes direction of it, assigns the pickets to their duties, collects funds, pays benefits, and reports from time to time regarding the progress of the strike to the international association.

Sometimes the district officials are required to enforce the observance of international rules and to make periodic examination of the methods of administration in the local unions. Their constant presence in the district enables them to perform this service more effectively than international officials could. Eleven of the above-mentioned eighty-five international unions delegate part of their judicial power to the district board or to some district official. In eight of them the district authorities may consider charges against the local unions as well as against members,<sup>11</sup> but in three others they may consider only cases in which members alone are involved.<sup>12</sup> The district committee, which can call witnesses and personally cross-examine them, is better able to determine the merits of a case than are the international officials, who must secure their evidence from the written statements of the two parties to the dispute. The local unions and individual members are protected by the right of appeal from the district to the international union.

The territorial jurisdiction of the district federations varies widely. The most common are the so-called joint councils, district councils, or district advisory boards which unite the local unions in the same city. During the period following the Civil War, before a national association of painters existed, the five or six societies of the trade in

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<sup>11</sup> Blast Furnace Workers, Bricklayers and Masons, Garment Workers, Iron, Steel and Tin Workers, Painters, Decorators and Paper Hangers, Seamen, Teamsters, and Tin Plate Workers.

<sup>12</sup> Hotel and Restaurant Employees, Interior Freight Handlers, and Locomotive Firemen and Enginemen.

New York City were united by a joint council.<sup>13</sup> Joint councils of Bricklayers and of other trades were formed about the same time in New York and other large cities where the overgrown local union had been split into several societies.<sup>14</sup> Of eighty-five international organizations which require the formation of district unions, forty-one provide solely for the creation of joint councils limited in jurisdiction to a single city, and thirty-six for larger district associations whose control extends over all or part of several States. The remaining eight international unions have established both joint councils of local unions in the same city and district associations of wider territorial jurisdiction.

When several cities, such as New York, Jersey City, and Hoboken, lie in close proximity to one another, the societies in these adjoining places frequently combine to form a single joint council. Such a joint council of all unions of cigar makers in New York, Jersey City, Hoboken, Brooklyn, and Williamsburg was formed as early as 1881.<sup>15</sup> These inter-urban councils are needed in the first place because even in industries with a local patronage keen competition exists between employers in adjacent cities. In addition, journeymen often live in one town and work in another, but prefer to be members of the local union in the town where they reside. In the building trades the place of employment shifts frequently from one to another of a series of adjacent towns, and to compel a journeyman to change his affiliation to a new local society every time he goes to work in such adjacent cities would cause him serious inconvenience. The bricklayers' unions of New York City, finding that they were unable to prevent fellow-craftsmen working in outside towns from being employed in New York City, decided about 1887 to form a joint council of all local organizations of the trade within a radius of seven miles of the city.<sup>16</sup> Some years later, however, by an agreement with the

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<sup>13</sup> International Journal [Iron Molders], November, 1866, p. 249.

<sup>14</sup> Ibid., December, 1866, p. 280.

<sup>15</sup> Proceedings, 1881.

<sup>16</sup> Constitution and Rules of Order, 1887.



Mason Builders' Association, which gave preference in employment to the New York bricklayers, the New York local unions succeeded in preventing members of unions outside of New York from securing work in the city.<sup>17</sup> The joint conference was then dissolved. On the conference board of the Iron Molders and on that of the Machinists in New York and vicinity are represented all local unions in the towns lying within a radius of sixty miles of New York City. In several trades joint councils have been formed to unite the local societies in the twin cities of Minneapolis and St. Paul, in Boston and its surrounding suburban towns, and in groups of adjacent small towns such as Cohoes, Albany, and Troy.

The primary functions of joint councils of local unions are the maintenance of uniform conditions of employment and the control over the declaration and conduct of strikes. The international unions have used them only to a very slight extent as administrative units. Only four hold the joint councils definitely responsible for the maintenance of honest administration and the observance of international rules by the local unions. Only two have vested them with judicial power.

The Typographical Union, the United Sons of Vulcan, the Iron Molders, the Cigar Makers, and other early federal associations attempted to federate the local unions in each State, but these attempts usually failed.' In the first place, the competitive area in which uniform regulation of employment is needed is seldom identical with a State but may include a part of one or parts of several States. Secondly, in one State there may be only three or four local unions of the trade; in another, fifty or more. Even for purposes of administration such divisions are usually inadequate. All of the early international unions mentioned above very soon abandoned their efforts to form state associations. At present nine international unions make provision in their con-

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<sup>17</sup> Thirty-first Annual Report of the President and the Secretary, 1896; Thirty-second Annual Report of the President and the Secretary, 1897.



stitutions for state associations. The membership in seven of these organizations is distributed fairly well in all cities and many towns and villages throughout the country.<sup>18</sup> In the National Association of Post Office Clerks the function of the state union is to organize new locals, in the other six to maintain uniform hours, wages, and other working conditions. The Locomotive Firemen and Locomotive Engineers have created state associations in order to obtain state legislation affecting the interests of railway employees. District unions of an entirely different character are used by them for collective bargaining.

Twenty-four international associations divide the territory under their jurisdiction into districts of variable size. In a number of unions the New England States constitute a single district. The International Seamen's Union follows the coast lines and inland waters in marking off its districts. One of its district unions claims jurisdiction over all seamen on the Atlantic Coast; another, over all seamen working on the Great Lakes, and the third, over those working on the Pacific Coast. The districts in the International Pilots' Association are similar. The state and district unions of coal miners which existed before the creation of a national federation of the trade have been retained by the United Mine Workers of America. These state and district unions embrace all miners in the same coal field or in a group of coal fields having common shipping points. Sometimes they are further subdivided into districts which embrace the miners working in one section of a large coal field or in a group of mines under the same management.

The district associations with broad territorial jurisdiction are used by thirteen of the above twenty-four international unions solely for administrative purposes. One of the vice-presidents of the international union is usually stationed in each district and serves as its executive head. Other international associations maintaining large district unions use

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<sup>18</sup> These are the Bricklayers, Granite Cutters, Stone Cutters, Horse-shoers, Post Office Clerks, Stationary Engineers, and Stationary Firemen.

them for collective bargaining as well as for administrative purposes.

Eight organizations of railway employees group all lodges on the same railway system into district unions. Each lodge along the system has a representative on the general committee of adjustment. When the members of a lodge work on several railway systems, the lodge may have a representative on the committees of adjustment of each system by which its members are employed. When a railway system is divided into two or more divisions or departments, each with its own manager under control of the general manager of the system, the railway employees form district unions to correspond. A general committee of adjustment is created for each division or department, and these several committees of adjustment elect representatives to a general committee of adjustment for the entire system. Part of the members of the International Brotherhood of Blacksmiths and Helpers and the International Association of Machinists work in railway shops, part are employed in general repair shops or in large machine shops. Both groups of workers are often organized together in the same local union. All blacksmiths or machinists working on the same railway system are, like other railroad employees, united through their representatives on the general committees of adjustment. Blacksmiths or machinists in the machine or repair shops belong to the district union with jurisdiction over the territory in which they are working.

Some of the organizations which permit the establishment of only one local union in a city allow local unions to have branches. These branches are entirely dominated by the parent society, and exist only at its discretion. The national union of carpenters and joiners, desirous of maintaining unity of action between the members of the trade in each community, at first chartered only one union in each place, but allowed a local union to establish branches. The branches, though holding meetings in convenient parts of the city, were kept in complete subordination to the parent local.

Naturally, they were dissatisfied with their position, and in 1886 the system was abolished.<sup>19</sup>

The linotype machine tenders employed in the printing industry in New York City were organized for a time as a branch of the local union of compositors. From the beginning the International Typographical Union has permitted only one local union in each branch of the trade to be chartered in any city. It desired control, however, over the machine tenders, who formerly had independent societies of their own. Since the absorption of the machine tenders by the Typographical Union, only one branch of machine tenders, namely, that in New York City, has been in existence. In all other places they have been absorbed into the local unions of compositors. The branch in New York was strictly controlled by the union of compositors, Local Union No. 6, to which all dues were paid and without whose consent no funds could be expended. The branch held a meeting each month immediately prior to the meetings of Local Union No. 6, in order that any course of action which it proposed might be referred promptly to the parent local. Members of the branch might attend the meetings of Local Union No. 6. The branch had one representative on the conference board which bargained with the employers and one representative on the executive board of the local union.

The branch has been used by a few organizations as a method of organizing the members of the trade in those places where they are not sufficiently numerous to maintain a society. In most unions isolated members are attached as individuals to the nearest local unions, and they have the same privileges and duties as any other members. On account of the distance, however, they are usually unable to attend its meetings, and, unless the local union makes particular efforts to bring questions to their attention, lose all voice in determining the policies of the organization. In the Boot and Shoe Workers' Union and a few other unions isolated journeymen do not belong to any local society, but

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<sup>19</sup> Constitution, 1886.

are attached to the headquarters of the international association as members-at-large. They pay dues directly to headquarters, are entitled to all international benefits, and may vote only on questions submitted to all the members of the union. Under either system the isolated journeyman has little voice in the affairs of the association. The chief advantages of membership to him are apparently that he remains eligible to sick, death, and other international benefits, and that when he travels in search of work he is admitted to any local union without payment of an initiation fee.

The United Brewery Workmen and a few other unions have endeavored to confer a limited degree of selfgovernment upon small groups of isolated members by organizing them as branches of the nearest local society. The members of the branch pay to the parent local union their monthly dues and assessments and are permitted to attend its meetings. If not near enough to attend, they may hold separate meetings at which they may vote on all matters under consideration by other members of the local union. They can make no contracts with employers nor take any other action without the consent of the society with which they are affiliated. When bridge and structural iron workers who are members of a union in some large city are sent away to perform work in some isolated community, they are usually permitted to organize themselves as a branch of the local union in the city from which they come.

The machine textile workers perform a highly specialized work and have no local unions. Only a few are found in each mill, and in no community are they sufficiently numerous to maintain a society. As in other trades, the members in each shop hold meetings occasionally. They elect a shop collector and a grievance committee to bargain with their employer. The national association groups the shops under its jurisdiction into four district unions. In the eastern district are included all shops in the State of Rhode Island and in the adjoining portions of Massachusetts and Con-

necticut; in the western district, the shops in and around New York City; in the northern district, the shops in and around Boston, and in the southern district, the shops in and around Philadelphia. At the head of each district there are two directors and a secretary. Meetings of all members in the district are held regularly at some central point.

The Seamen have adopted a modified form of the branch system suited to their peculiar needs. Because of the roving character of the sailor's life, they cannot be attached to a particular local union. The seamen of the Atlantic Coast are organized into a single district union with headquarters in Boston. At each port there is a branch in charge of an agent. The members belong to the district organization, not to a branch, but may take part in the meetings of the branch at any port where they may be stopping. No branch can declare a strike, expel a member, or take any other independent action. All matters of any importance must be referred to a vote of the district. Even the agent in charge of a branch is not elected by those present at one of its meetings, but by a vote of the members of the entire district. In fact, the branch is merely a convenient point of call for the members in journeying up and down the coast, where they can pay their dues to the district union and register their vote on matters under discussion by the district. Save in these few exceptional instances the system of branches has been impracticable. Each member is affiliated directly with the nearest local union, and unity of action between adjacent local unions is maintained by federating them into district unions.

In the great majority of trades there has not been, as has been the case among the coal mine workers, a gradual expansion of the unit of government from local to district and from district to national unions. On the contrary, almost invariably the first federal organization of the craft has borne the title "National" or "International" union, and has claimed jurisdiction over all local societies of the trade

in the United States or on the whole continent of America. Usually, however, these so-called national or international unions have been able in the beginning to organize subordinate societies in only a few of the more important centers of the industry. Though the first federal organization of machinists and blacksmiths, formed in 1859, bore the ambitious title of "Grand Union of Machinists and Blacksmiths of North America," it had members in only four cities, Philadelphia, Baltimore, Reading, Pennsylvania, and Wilmington, Delaware. The territorial jurisdiction of the association expanded rapidly, however, and at the convention of 1860 delegates were present from cities in Pennsylvania, Maryland, Delaware, New York, New Jersey, Ohio, Virginia, Michigan, Kentucky, and Massachusetts.<sup>20</sup> The Granite Cutters' International Association originated among four local unions of granite cutters working in the quarries of Maine, but within the year had spread over New England and beyond into New York, Virginia, and Missouri.<sup>21</sup>

The territorial jurisdiction of the early national organizations, especially those established prior to the Civil War, was confined chiefly to New England, the Middle Atlantic States, and the States of the Middle West. During the Civil War the few scattered branches in the South were lost to the central associations. Since the Civil War, with the rise of a new industrial South, branches have been established in ever increasing numbers by national trade unions in that part of the country. In the years immediately succeeding the war we find the Iron Molders' Union rapidly extending its jurisdiction into Louisiana, Alabama, Georgia, Kansas, Texas, and California.<sup>22</sup> In 1871 the president of the Ma-

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<sup>20</sup> In March, 1860, there occurred a large strike in the Baldwin Locomotive Works in Philadelphia. At once the officers of the so-called national union communicated with unaffiliated societies of the trade in other cities in order to prevent their members from coming to Philadelphia to act as strike breakers. The strike failed, but as a result of the correspondence and agitation on the part of the national officers the organization spread north, south, east, and west (*Machinists and Blacksmiths' Journal*, March, June, 1872).

<sup>21</sup> *Granite Cutters' Journal*, August, 1877, p. 5.

<sup>22</sup> Report of the International President, in *Proceedings*, 1867.

chinists' and Blacksmiths' International Union made a trip through the South, and organized local unions in Tennessee, Alabama, Louisiana, Georgia, and Mississippi.<sup>23</sup>

Within recent years the territorial jurisdiction of the new national unions as well as of the older ones has been extended rapidly over the South and over the States west of the Mississippi. Since 1890, miners in the outlying coal fields of the South and the Far West have been brought under the banner of the United Mine Workers of America. In the South the miners of Kentucky and Tennessee were early formed into a subordinate district union. In some of the western States such as Kansas and Colorado, where the yield of coal has been small and the coal has been used primarily for local consumption, the workers have been slow to organize, and when organized have remained apart in independent district unions. But these western coal fields have greatly increased their yield and have begun also to encroach on each other's markets. At the same time, the competition in coal between the States lining the opposite banks of the Mississippi River has formed the connecting link between the East and the West.<sup>24</sup> In 1893, therefore, we find the organizers of the United Mine Workers of America welding into subordinate districts of the national union the coal miners of Iowa, Missouri, Kansas, Colorado, and other western States.<sup>25</sup> The movement culminated in 1894 when the miners of eleven States and one Territory obeyed the orders of the central association to suspend work.<sup>26</sup> The ensuing industrial depression checked the further territorial growth of the national union, and ultimately destroyed the outlying district unions. During the period of recovery from 1896 to 1898 only the coal miners of the central district and of Kentucky and Tennessee

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<sup>23</sup> Machinists and Blacksmiths' Journal, April, 1871, p. 183.

<sup>24</sup> P. H. Penna, "History of Conditions in Colorado and Kansas," in United Mine Workers' Journal, April 27, 1893.

<sup>25</sup> Report of the President, in United Mine Workers' Journal, April 13, 1893.

<sup>26</sup> Report of the Fifth Annual Convention, 1894; United Mine Workers' Journal, April 19, 1894, p. 2. See also *ibid.*, May 3, June 14, 1894.



remained under the control of the national union. The United Mine Workers were for a time checked in their effort to gain control over the territory west of the Mississippi by a rival organization, the Western Federation of Miners, which claimed jurisdiction over the coal workers as well as the miners of gold, silver, lead, and other metals. At present, however, the United Mine Workers have subordinate lodges in many outlying coal fields, even in such newly developed ones as those of Texas, New Mexico, Utah, Washington, and British Columbia.

Certain so-called national unions have still a very limited territorial jurisdiction because the industries in which their members work are localized in one small portion of the country.<sup>27</sup> The National Mule Spinners' Association of America has not a single branch outside of New England. The reason is that, except in some of the older textile centers, the ring frame, which can be easily managed by women and children, is replacing the mule. Mule spinners are seldom found, therefore, in the southern cotton mills or, indeed, in any of the newer textile centers, but are employed chiefly in Fall River, New Bedford, and a few other New England towns. The elastic goring weavers form another vanishing craft, wholly confined to New England. They make the elastic goring used for congress shoes, which are now rapidly disappearing. In 1904 the federal union of the trade embraced only six branches in various New England towns; and in 1906 the Elastic Goring Weavers' Amalgamated Association of the United States of America consisted of two branches located in Brockton and Easthampton, and had a total membership of about ninety.<sup>28</sup> The table knife grinders are employed in an industry almost entirely localized in New England, and the Table Knife Grinders' National Union has consisted of about eight branches in various small towns of Massachusetts and Connecticut. The

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<sup>27</sup> See page 57.

<sup>28</sup> Report of Branches of Elastic Goring Weavers' Amalgamated Association of the United States for month ending January 31, 1904; MS. Annual Report of the General Secretary, 1906.



jurisdiction of the Amalgamated Lace Operatives of America is similarly limited because the lace industry is concentrated, with the exception of one factory in Rhode Island, in East Philadelphia and a few small towns of eastern Pennsylvania.

On the other hand, a wide territorial jurisdiction is attained by the federal unions of such trades as building mechanics, printers, bakers, and machinists, which can be found in every town and even in many villages in all parts of the country. In 1891 the secretary of the United Brotherhood of Carpenters and Joiners was able to report that his organization, which at the time of its origin ten years before had consisted of local unions in eleven of the more important cities of the East and the Middle West, embraced seven hundred and ninety-eight locals, situated in every State and Territory of the United States except Alaska.<sup>29</sup> Similarly, the International Typographical Union and the Bricklayers' and Masons' International Union have branches in every important city of the United States.

Very early in the history of federal trade unions in the United States their jurisdiction was extended over local organizations of the craft in Canada. The federal union of soft stone cutters, which was formed in 1853, bore in 1858 the name "Journeyman Stone Cutters of the United States and Canada," and possessed jurisdiction over local societies of the trade not only in the United States, but also in Toronto and Hamilton, Canada.<sup>30</sup> Other trades, like the bricklayers or granite cutters, desiring to create a federal organization which should embrace local unions of the craft anywhere on the continent of America, adopted at the first convention such titles as "International Union," or "Association of North America," though Canadian unions were not admitted to some of them until many years later.

While the American workmen have always desired trade-

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<sup>29</sup> The Carpenter, August, 1891.

<sup>30</sup> Circular of the Journeyman Stone Cutters' Association of the United States and Canada, April, May, 1858.

union amalgamation with their Canadian fellow-craftsmen, many Canadian workmen have favored the creation of separate national unions. Until recently the movement for separate national unions made little headway, partly because very few trades in Canada had a sufficient number of local organizations to maintain satisfactorily separate national unions. Prior to 1900 probably less than three hundred local unions, with a total membership of not more than fifteen thousand, existed in the whole Dominion of Canada. Of the societies affiliated with international associations, the five railway brotherhoods claimed the larger portion. Few of the international unions possessed more than one or two Canadian branches. Since 1900 the trade-union movement in Canada has advanced rapidly. In 1902 the Canadian unions numbered eleven hundred, an increase of eight hundred in three years; and the membership aggregated about one hundred thousand. Two years later there were one thousand five hundred and sixty-seven local unions.<sup>21</sup> In the city of Toronto alone the number of local unions increased from forty-eight to one hundred and eighteen between 1900 and 1902.<sup>22</sup> Since 1902 the membership of Canadian unions has grown at the rate of about five thousand a year. Unions are being reorganized even in the newly developed regions of Manitoba and the Northwest Territory, and in British Columbia over two hundred local unions had been formed in 1905. With the growth of the Canadian labor movement the spirit of nationalism, as opposed to internationalism, assumed new life.

The center of the national trade-union movement in Canada has been the longer settled Province of Quebec, where the French element predominates and French is the language chiefly spoken. In Montreal and Quebec the English-speaking workmen are in a hopeless minority. Realizing their inability to influence the policy of the union, they largely remain apart from the labor movement. In Montreal

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<sup>21</sup> Shoe Workers' Journal, October, 1902, p. 14.

<sup>22</sup> American Federationist, December, 1903, p. 1283; December, 1904, p. 1075.

there are, indeed, local unions composed wholly of English-speaking machinists and printers. A few local unions with a mixed membership of both English and French workers have also been organized, but most of the unions are composed entirely of French Canadians. These French Canadians are not in sympathy with the international trade-union movement. Their passionate fondness for their traditions and their loyalty to the French language isolate them to a considerable extent from the English-speaking people of the United States and Canada. The desire of the Canadian premier for "a united people, who are Canadians first and foremost and French and English only incidentally," has not yet been attained; and one manifestation of this lack of unity is the presence of independent local unions in Montreal and Quebec.<sup>22</sup>

On the other hand, in the Province of Ontario, settled largely by English or American immigrants, the policy of internationalism has always been favored. That province has felt most strongly the influence of the labor movement in the United States. In fact, the Canadian branches of the international unions were confined for many years almost wholly to Ontario, particularly to the cities of Toronto and Hamilton. Moreover, Ontario has always been the best organized part of Canada; and today nearly one half of the local unions in the Dominion are located in that province. The workers in the provinces of Western Canada, which are now being industrially developed, are also English-speaking. Their unions have been founded largely by organizers from the United States, and they are heartily in sympathy with the international movement.

The national trade-union movement in Canada has received encouragement from the clergy and from the manufacturers. In some instances the manufacturers have even forced their employees to withdraw from the international unions and join the Canadian associations of the trade. For example, the shoe manufacturers of Montreal have for-

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<sup>22</sup> American Federationist, October, 1903, p. 1034.

bidden their workers to belong to the branches which the Boot and Shoe Workers' Union has established in that city, and have urged them to join the independent Canadian organizations of shoemakers.<sup>84</sup> The manufacturers are in favor of "national unionism" partly, perhaps, because they wish the Canadian workers to patronize goods bearing a national instead of an international label. Largely, however, their attitude is ascribable to the fear of the strong financial and moral support and assistance extended in time of strike by the international unions to their Canadian branches. American labor leaders argue that the motives of the manufacturers are not wholly patriotic, since many who are enthusiastic advocates of national trade unionism have affiliated themselves with the Canadian branches of international manufacturers' associations.

The fight against the international unions culminated in 1903 with the introduction into the Canadian Senate of a bill which provided that any person not a British subject who incited Canadian workmen to engage in a strike would be guilty of an indictable offence, punishable by two years' imprisonment.<sup>85</sup> Interference in local affairs by trade-union officials from over the border, particularly at the time of a strike, has been especially irritating to the Canadian manufacturers, whose influence was added to that of the national unionists in favor of the bill. The measure failed, however, to pass.<sup>86</sup>

The national unionists in Canada desire to form a general federation of trades which shall be independent of the

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<sup>84</sup> Shoe Workers' Journal, August, 1902, p. 21.

<sup>85</sup> Official Journal [Amalgamated Meat Cutters and Butcher Workmen], July, 1903, p. 31; American Federationist, June, 1903, p. 469; December, 1903, p. 1283.

<sup>86</sup> The bill read as follows: "The Criminal Code, 1892, is hereby amended by adding thereto the following section 524: 'Every one is guilty of an indictable offense and liable to two years imprisonment who, being a person not a British subject, whether residing in or out of Canada, does in Canada incite, urge, or induce workmen, by any act or means whatsoever, to quit any employment in which they may be engaged, or to enter upon any strike with the object of enforcing additional wages or terms of employment from their employer.'"

American Federation of Labor. The Dominion Trades and Labor Congress, which has been in existence since 1884, is a branch of the American Federation of Labor, and bears substantially the same relation to it as do the state federations of labor in the United States. Its primary function is the promotion in Canada of legislation favorable to workmen.<sup>87</sup> Until 1902 the Dominion Trades and Labor Congress admitted to representation not only local branches of the international trade unions, but also independent Canadian associations and local assemblies of the Knights of Labor. In that year, however, a rule was adopted excluding these local assemblies and independent trade unions, whereupon the associations outlawed by the congress formed an independent National Federation of Trades, and established local labor federations in a few cities such as Montreal and Quebec. There do exist in Canada, nevertheless, two national associations whose affiliation with corresponding organizations in the United States is not desired and is not perhaps possible, and these are allowed representation in the Dominion Trades and Labor Congress. They are the Federated Association of Letter Carriers of Canada, composed of government employees, and the National Association of Marine Engineers of Canada, whose members are under strict government regulation.<sup>88</sup>

The same economic forces which led to the formation of national unions in the United States seem likely to bring about the ultimate triumph of the continental trade-union movement in North America. While goods of Canadian manufacture are not largely imported into the United States, American products compete with those of home manufacture in the markets of Canada. The pioneer factories of a

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<sup>87</sup> In 1903 the Dominion Trades and Labor Congress applied to the American Federation of Labor for sole power to issue charters to local federations of trades in Canada. This request was refused as being opposed to the spirit of complete internationalism. The American Federation of Labor requires, however, that the central labor unions which it establishes in various cities of Canada shall become affiliated with the Dominion Trades and Labor Congress.

<sup>88</sup> Report of Proceedings of the Nineteenth Annual Convention of the Trades and Labor Congress of Canada, 1903, pp. 18, 19, 42, 47, 51.

newly developing Canadian industry are often manned with trained workers from the United States. American workmen are also imported into the Dominion to act as strike breakers. On the other hand, the French Canadian shoemakers have been pouring into New England for some years. Local unions of lasters in such centers of shoe manufacturing as Marlboro or Haverhill reported in 1890 that one half of the membership consisted of French Canadians. In fact, because of the inferior skill of the Canadian lasters, the Lasters' Protective Union of the United States was led to seek control over the Canadian unions of the trade for the purpose of regulating the rules of apprenticeship prevailing in the shoe factories of the Dominion.<sup>39</sup>

The national movement in Canada has never attained great proportions. According to one estimate, of fifteen hundred local trade unions in Canada thirteen hundred were affiliated in 1903 with continental associations.<sup>40</sup> The war against nationalism has been waged with considerable force even in such strongholds of the movement as Montreal and Quebec. Many of the independent unions in Montreal have allied themselves with the international trade unions, and all new unions have been chartered as branches of these continental associations. In 1902, after an independent existence of some years, the Longshoremen's Union of Montreal, with thirty-five hundred members, the largest local union in Canada, joined the international union of the trade.<sup>41</sup> The Federated Trades and Labor Council of Montreal, which began life about 1899 as a branch of the American Federation of Labor with representation from four local unions of different trades, now claims jurisdiction over fifty local unions with a total membership of twenty-five thousand.<sup>42</sup>

Probably the sharpest struggle to gain an entrance into Montreal has been waged by the international union of the boot and shoe workers. There are several large shoe fac-

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<sup>39</sup> The Laster, May 15, July 15, August 15, 1890.

<sup>40</sup> Official Journal [Amalgamated Meat Cutters and Butcher Workmen], June, 1903, pp. 1-3.

<sup>41</sup> Shoe Workers' Journal, September, 1902, p. 20.

<sup>42</sup> American Federationist, October, 1903, p. 1035.

tories in Montreal, and the city is one of the most important shoe centers in Canada. For some years the shoe workers of Montreal were organized into independent unions. When, in 1901, the international union of the boot and shoe workers established a branch in Montreal, the independent societies combined for more effectual resistance against this invasion under the title "Canadian Federation of Shoemakers."<sup>48</sup> The independents were aided by the manufacturers, who forced some of the journeymen to abandon the international union and join the Canadian Federation of Shoemakers. Notwithstanding this opposition, the international union had succeeded by 1902 in organizing four local branches of shoemakers, and by 1903 six branches had been formed; but the four independent unions of the trade in Montreal still maintained their existence.

The city of Quebec remains the stronghold of the independent movement. As yet no Federated Trades and Labor Council has been established in Quebec by the American Federation of Labor. The city is the headquarters of the independent national federation of trades, and at a meeting of this body held there in 1903, forty-two of its independent local societies were represented.

Mexico is still in the early stage of industrial development, and branches have been established there by only a few international associations. The federal trade unions which have organized local unions in Mexico are the associations of railway employees and members of building trades and other crafts which form, in a new country, the advance guard of industrial invasion. Recently an attempt has been made to extend the jurisdiction of the North American unions over the outlying possessions of the United States—Alaska, the Canal Zone, and the islands of Porto Rico, Hawaii, and the Philippines. The United Brotherhood of Carpenters and Joiners has local branches in Porto Rico and Hawaii. The International Typographical Union has branches in Porto Rico, Hawaii, and Alaska. The

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<sup>48</sup> Shoe Workers' Journal, August, 1902, p. 21; Proceedings, 1904, pp. 69, 97.



Machinists' International Union has organized subordinate divisions in Porto Rico and the Canal Zone, and the International Brotherhood of Electrical Workers has chartered a branch in the Philippines.

The efforts which have been made to bring the workers in the outlying possessions of the United States into the labor movement of the continent have been most successful in Porto Rico. Local unions have been established on the island by the international unions of cigar makers, longshoremen, painters, decorators and paperhangers, carpenters and joiners, machinists, printers, and others. During 1904 forty-two branch societies of the various continental associations were organized, and since then the growth of the movement has steadily continued. The American Federation of Labor has issued charters to local associations of agricultural and other workers, and has established central labor unions or city federations of trades at San Juan, Ponce, and other places. All Porto Rican labor organizations affiliated with international unions are united together in the "Federacion Libre" or Free Federation of Workmen, which corresponds to the state branches of the American Federation of Labor. There is a rival federation of trades known as the "Federacion Regional," but all of the unions which compose it are confined apparently to San Juan. During the visit of Mr. Gompers to the island in 1904 he endeavored to bring about an amalgamation of the two federations, but was unsuccessful. Officials of the American Federation of Labor say that the Federacion Regional is not a bona fide labor organization, but is designed partly for political purposes, and is engineered by certain local politicians.<sup>44</sup>

In the Hawaiian Islands practically all the white mechanics of Honolulu are members of local unions affiliated with international associations of the North American continent, and these local unions are allied into a trades' council maintained by the American Federation of Labor. But Chinese

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<sup>44</sup> American Federationist, April, 1904, pp. 293-297; May, 1904, p. 415; December, 1904, p. 1076.



and Japanese are now rapidly taking the places of the whites in every trade. In consequence, the white mechanics are rapidly leaving the island, and the trade-union movement is declining, so that the total membership of ten local organizations affiliated with the Honolulu Trades and Labor Council in May, 1901, had by May, 1903, shrunk from about five hundred to one hundred and eighty-seven.<sup>45</sup>

The conquest of the Philippine Islands by the United States brought to the Filipino workers the conception of trade unionism. In 1899, shortly after the American invasion, they made their first attempt to organize unions, and societies of barbers, cigar makers, tobacco workers, carpenters, wood workers, painters, lithographers, and others rapidly appeared. A few groups of American workmen who had been attracted to the islands after the annexation organized themselves as branches of the trade unions at home. The Filipinos have avoided all alliances with the North American associations. They have not imitated the American method of forming federations of the local societies of each trade and of further federating the federations into general labor unions. All their local societies are united irrespective of trade divisions into the Democratic Labor Union of the Philippines. Agents of the American Federation of Labor have endeavored to persuade them to adopt the American method of organization and affiliate themselves with the continental unions, but so far the Filipinos have held aloof.<sup>46</sup>

An ideal of the trade unionists is ultimately to unite the workers of the world into vast international bodies. Socialism is a world movement, then why not trade unionism? Not in America alone, but in Europe and Australasia as well national unions are expanding into continental associations. International Workingmen's Congresses are held in Europe frequently, and the closest cooperation often exists between the trade unions of the various countries. The

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<sup>45</sup> American Federationist, December, 1903, p. 1269.

<sup>46</sup> Ibid., October, 1903, pp. 1021-1031.

workers of New South Wales, Victoria, West Australia, South Australia, and Queensland hold an Australasian Trade Union Congress at periodic intervals, and though united action is hindered, as in the case of strikes, by the existence of compulsory arbitration in some states, a close federation of the trade unions in all Australasia is much favored.<sup>47</sup> The next step should naturally be the convocation of intercontinental congresses and the creation of intercontinental federations.

Much the same reasons which in the beginning led to the formation of national trade unions are now being urged in favor of intercontinental unions. High national tariff walls are supposed to prevent the profits of the manufacturer and the wages of the workman in a country from being lowered by the competition of imported goods made by cheap foreign labor. In free-trade England, however, the invasion of the home market by foreign goods is attributed by some to the narrow policy pursued by English trade unionists. Thus, the fact that German steel castings, Swedish ready-made doors, or other foreign products can be bought in England for a smaller price than goods made at nearby mills is ascribed by one writer to the enforcement of two policies by English trade unions. The first of these is the *ca' canny* or *go-easy* policy, by which the stint of work, and hence the daily output of a factory, is arbitrarily limited.<sup>48</sup> The second is the opposition to the introduction of machinery and other labor-saving devices. Assertions regarding the extent and influence of such policies are exceedingly difficult to prove. They suggest, however, that if trade-union demands can influence the manufacturers' control of home or foreign markets, world-wide collective bargaining by the workers will soon be needed. The creation of a great centralized strike fund supported by all organizations of a trade in the world has been suggested as a means of coping

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<sup>47</sup> American Federationist, June, 1903, pp. 463, 464.

<sup>48</sup> "If two Scotsmen are walking together and one walks too quickly for the other, he says to him, '*Ca' canny, mon, ca' canny,*' which means '*Go easy, man, go easy*'" (E. A. Pratt, *Trade Unionism and British Industry*, p. 22).

with gigantic trusts and powerful anti-union alliances of employers.<sup>49</sup> In case of a serious and wide-reaching strike in one country, money is sent frequently to the strikers by the workers of other lands, and this custom seems to be growing.

- The most potent reason for world-wide trade unionism is the international movement of the labor supply. One serious evil from the wage-earners' point of view has been the importation of foreign laborers on contract, particularly to act as strike breakers. As early as 1831 the master printers of New York secured by advertisements in England and Scotland foreign journeymen printers to take the places of their employees who had been ordered on strike by the New York Typographical Society.<sup>50</sup> Again, to illustrate by an instance occurring many years later, in 1882, when the boiler makers and iron ship builders of New York City went on strike, several firms sent to England for men.<sup>51</sup> On this occasion, however, the president of the International Brotherhood of Boiler Makers and Ship Builders and Helpers cabled to the secretary of the boiler makers' union of Great Britain, and as a result not a man could be hired in England. The American workers have protected themselves against such importations by securing the adoption of a Federal statute forbidding the importation of workers into their country on contract. Laborers imported on contract have always formed, however, only a small part of the stream of immigrants pouring into the United States. This invasion of foreigners still continues, and prevents unions otherwise strong from regulating the supply of workers in the trade and thus influencing wages. The American unions have desired protection from the competition of foreign workers similar to the protection accorded to American manufacturers from the competition of foreign goods.

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<sup>49</sup> For example, see the *Shoe Workers' Journal*, September, 1902, p. 10.

<sup>50</sup> Historical Sketch in the Constitution of the New York Typographical Association as amended in 1833.

<sup>51</sup> Simonds and McEnnis.

In the absence of legal restriction on immigration, the unions have tried in several ways to protect themselves. One method, undoubtedly a very crude one, has been to discourage further immigration by charging a heavy initiation fee for admission to the union. The imposition of such a fee results practically in exclusion from the union; and if the trade is strongly organized and the members consistently refuse to work with non-union men, the immigrant finds difficulty in securing work at his trade. Such a policy is pursued by the American wire weavers who make the wire cloth used in the manufacture of paper. The trade is small, consisting of only about three or four hundred members, practically all of whom are controlled by the American Wire Weavers' Protective Association. Entrance to the craft is restricted by stringent apprenticeship regulations, yet the union has been handicapped greatly by the immigration of English and Scotch wire weavers who are attracted to this country by the high wages. To remedy this condition, the American wire weavers prohibit European immigrants from joining the union by imposing on them an initiation fee of five hundred dollars, and, by refusing to work in the same factory with non-unionists, prevent them from finding employment. The Lace Curtain Operatives pursue a similar policy. The trade, like that of the wire weavers, is small, and is controlled almost wholly by the union. At the same time, the lace workers are threatened by an influx of foreigners. A uniform initiation fee of twenty dollars is charged by all local branches, and many desire to make it much higher. Recently the officers of the union have been given discretion to increase the amount of the initiation fee during periods when the industry is dull. The European unions of lace workers must be notified each time the amount of the fee is changed; since, however, the industry is fitful, busy and prosperous periods of a few weeks alternating quickly with periods of depression, they cannot be kept informed of all the changes in the amount of the initiation fee.

Unless a union controls most members of the trade, the policy of exclusion is not successful, since the immigrant can find work in the non-union or open shop. Most organizations, therefore, try in every way to bring foreigners into the union, and to facilitate this have sometimes entered into agreements with European associations, particularly those of Great Britain. To minimize the competition of immigrant iron molders, the president of the Iron Molders' Union of North America proposed as early as 1867 an alliance with English and Scotch unions of the trade.<sup>52</sup> Nothing was accomplished until 1872, when an agreement was entered into with the Friendly Society of Iron Founders of England, Ireland and Wales. By the terms of this agreement the Iron Molders' Union of North America agreed to admit, without payment of an initiation fee, journeymen bearing clearance cards from the Friendly Society. On their part, the members of the Friendly Society agreed not to enter into written contracts binding them to work in any foundry of the United States or Canada where the Molders were on strike. The society promised also to inflict punishment, when opportunity should arise, on any member who failed to deposit his card with the American union within one week after his arrival in America.<sup>53</sup> A little later it agreed to admit, without payment of an initiation fee, members of the American union who came to Great Britain. The Cigar Makers' International Union of America entered into a similar agreement with the Cigar Makers' Mutual Association of England about 1880,<sup>54</sup> and is ready at the present day to accept cigar makers belonging to foreign societies without payment of an initiation fee, provided the foreign societies grant to its members the same privilege.<sup>55</sup> The Piano and Organ Workers' Union accepts members in good standing with organizations of the trade in foreign coun-

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<sup>52</sup> Report of the President, in Proceedings, 1867.

<sup>53</sup> Report of the President, in Proceedings of the Iron Molders' Union, 1872; International Journal [Iron Molders], September, 1872.

<sup>54</sup> Report of the President, in Supplement to Cigar Makers' Official Journal, September, 1880.

<sup>55</sup> Cigar Makers' Official Journal, October, 1881, pp. 5, 10.

tries without payment of an initiation fee, provided they join within four weeks after their arrival in America. A similar policy has been followed by the American unions of printers, coal mine workers, and boot and shoe workers.

Replies to letters which the president of the American Federation of Labor sent in 1905 to trade unions of foreign countries for the purpose of urging the mutual recognition of cards between unions of kindred crafts and callings showed that the practice of admitting members of foreign unions without payment of an initiation fee was more common in Europe than in America. The painters, varnishers, plasterers, and whitewashers of Germany, for example, reported that agreements providing for the remission of initiation fees existed between the principal organizations of these trades in Germany, Denmark, Austria-Hungary, Servia, and Switzerland, but that the Brotherhood of Painters, Decorators and Paperhangers of America have refused to enter into such an agreement. Similarly, the Amalgamated Operative Lace Makers of Nottingham, England, reported that the organized lace makers of England, France, Scotland, and Spain have reached an agreement whereby each association admits members bearing cards from the others without requiring an initiation fee. The same privilege is extended on reciprocal terms to American lace makers; but the American organization has not accepted it, and imposes a heavy initiation fee on immigrant lace makers.

The investigation of the American Federation of Labor showed that the unions both at home and abroad were favorable on the whole to the mutual recognition of travelling cards. Certain modifications of the scheme were urged. The suggestion was made that the immigrant workman who was admitted to the union of his newly adopted country without paying a fee must have belonged to the union of the trade in his former country for longer than a certain period. Most of the European associations insisted, however, that the required minimum period of membership in the former union be as short as possible, certainly not more

than one year. Unions paying sick, death, and other benefits were also reluctant to allow journeymen from foreign associations not paying such benefits to become eligible to receive them until they had belonged for at least a certain length of time.<sup>56</sup>

An effective alliance between trade unionists of Europe and America is still largely a dream of the future; yet even as correspondence and informal cooperation between local societies led in America to the creation of national and continental associations, so the agreements and exchange of courtesies between American and European unions may possibly lead to world federation. A few intercontinental unions exist, indeed, at the present time, and the formation of others has been attempted in the past. The oldest examples are two British trade unions, the Amalgamated Society of Carpenters and Joiners and the Amalgamated Society of Engineers, which have established branch societies in the United States, Canada, New Zealand, Australia, South Africa, and other parts of the world where British workers are to be found in numbers. Both unions have founded branches in most of the larger cities of North America, and have united these branches into American-Canadian districts. These districts have councils and secretaries of their own, and enjoy a considerable degree of autonomy even on such important questions as strikes. Both are affiliated with the American Federation of Labor.

These British associations have attained such wide territorial jurisdiction because of the desire of their members on emigrating to other countries to remain eligible to the sick, death, and other benefits of the home society. The benefits paid by American unions, as compared with those of English unions in these trades, are held to be completely inadequate. Moreover, in order to be entitled to them, one must have belonged to the American union for a certain length of time. The large benefits paid by these English organizations have led even native Americans to join them.

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<sup>56</sup> Proceedings of the Twenty-sixth Annual Convention of the American Federation of Labor, 1906.

The attempt of the British unions to maintain branches in America has caused them to clash with certain American organizations. A bitter jurisdictional dispute has existed for years between the Amalgamated Society of Carpenters and Joiners and the United Brotherhood of Carpenters and Joiners of America. The Amalgamated Society of Engineers, which combines several trades that in America are organized into separate associations, has had to wage a controversy simultaneously with several American unions, namely, the International Association of Machinists, the Patternmakers' League of North America, and the Brotherhood of Blacksmiths and Helpers.

The unions native to American soil have resented greatly this encroachment on their territory by alien associations. Early in the history of this foreign invasion their attitude was well expressed by a certain labor publication as follows: "It is certainly not claiming too much to assert that the men acquainted with our institutions, the peculiarities and wants of our own people are better able to direct the labor movement and control the various labor organizations than Englishmen, Scotchmen, or Irishmen, residing in Great Britain or continental Europe. American institutions are bound to predominate on the Western Continent, and we think American workmen, both native and foreign born, are just as qualified to direct their own affairs and settle their own grievances as men who reside three or four thousand miles from the field of operation. We welcome the good men and true from all countries, and ask their aid and advice, but we claim and have a right to expect that those who cast their lot with us, and gain a livelihood in our midst, should become *home* instead of *foreign* missionaries. Let us reverse the case, and suppose the president of the Machinists and Blacksmiths' Union of North America should appoint deputies for the several counties of Great Britain, and organize unions which acknowledge fealty alone to the Western International. What a hue and cry of unwarrantable impertinence would be raised from one end of the island to the other, and justly too. Now, what is



sauce for the goose is sauce for the gander. If it would be in bad taste to establish American Unions in Great Britain, is it not equally so to establish British Unions in the United States? Properly guarded, both organizations would become helpmates to each other instead of being as at present stumbling blocks in each other's way."<sup>57</sup>

Within recent years various schemes have been outlined for the partial amalgamation of the American districts of the British societies with the unions in the United States. In 1902 the executive council of the American Federation of Labor decided that while the unions of blacksmiths, patternmakers, and machinists in the United States should be accorded full jurisdiction in all trade matters such as regulation of wages and hours, the members of the American-Canadian district of the Amalgamated Society of Engineers should pay dues to the British association and hence be entitled to receive its sick, death, and other benefits. The Amalgamated Society of Engineers refused, however, to accept this decision.<sup>58</sup> Again, in 1905, an umpire selected by the American District of the Amalgamated Society of Carpenters and Joiners and the United Brotherhood of Carpenters and Joiners of North America proposed the creation of joint councils in all cities and towns where the United Brotherhood and the Amalgamated Society have branches. These joint councils were to have power to regulate wages and hours, to maintain business agents, and to pay strike benefits. The American Carpenters believe that the complete absorption of the British branches of the trade by their association is the only satisfactory solution, and they refuse to compromise.<sup>59</sup>

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<sup>57</sup> Quoted from the *Workman's Advocate*, in the *Machinists and Blacksmiths' Journal*, January, 1872, p. 477.

<sup>58</sup> Report of the Conference between the Sectional Unions and the Amalgamated Society of Engineers, Cleveland (n. d.).

<sup>59</sup> For a copy of proposed "temporary trade or working agreement," see *The Carpenter*, December, 1903, p. 5. For later modification of temporary agreement, see *Proceedings of the Thirteenth General Convention of the United Brotherhood of Carpenters and Joiners*, 1904, p. 220. The discussion and vote on the umpire's plan of amalgamation is contained in the *Proceedings of the Fourteenth Biennial Convention of the United Brotherhood of Carpenters and Joiners*, 1906, pp. 35-37.

Attempts have been made in the past by several American associations to confederate with European unions, though apparently with little success. When the call for the first national convention of window glass workers was issued in 1874, the establishment of the proposed national union was considered to be a preliminary step to the creation of a wider confederation embracing similar branches of skilled labor in Europe.<sup>60</sup> In 1884, at the high tide in the Knights of Labor movement, a former official of the Window Glass Workers was sent to Europe by the Window Glass Workers' National Assembly 300, Knights of Labor, to establish branches of the Knights of Labor among the glass workers of Europe. The proposed federation was declared at the time to be "not so difficult an undertaking as would at first seem. The foundation of a universal union had," it was said, "been laid in England, France and Belgium. The work of solidifying all into one organization is the work of the future. When production, stock, consumption, the number of men idle or employed, and the number of apprentices learning the trade, is known all over the world, and sent to a common headquarters, then the perfect union shall have been attained."<sup>61</sup> Apparently, however, the attempt of the Window Glass Workers failed.

The International Brotherhood of Boiler Makers, Iron Shipbuilders and Helpers was more successful in maintaining for a time an alliance with the British union of the trade. Intimate relations began in 1882 with the negotiations between the officers of the two associations to prevent the importation of English boiler makers into New York City to take the place of the men on strike. In 1885 the English society sent representatives to the convention of the American union, and the two associations became united. In 1887 the Boiler Makers and Iron Shipbuilders claimed to be the only association federated with their English fellow-craftsmen. All traces of the existence of such an alliance are lost, however, after a few years. In 1893 the United

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<sup>60</sup> National Labor Tribune, May 23, 1874, p. 1.

<sup>61</sup> Ibid., October 11, 1884, p. 4.

Brewery Workmen of America began negotiations with the national union of German brewery workmen looking to the establishment of an intercontinental union. From these negotiations apparently nothing resulted.<sup>63</sup> Since 1894, fraternal delegates from the British Trade Union Congress have been present at conventions of the American Federation of Labor, and delegates are sent from the American Federation to the British Trade Union Congress.<sup>64</sup>

A wide-reaching though very loose alliance has been maintained by the coal miners' unions of the various countries. An International Congress at which the miners' associations of England, Scotland, Wales, Belgium, France, Germany, and Austria-Hungary have been represented has been held annually by the miners of Europe since about 1890. In 1904 the United Mine Workers of America were invited to send delegates to the congress, and with their admission over two million miners were said to be represented by delegates who came from countries producing nineteen twentieths of all the coal mined in the world.<sup>64</sup> The results of these congresses have been indirect. A wide variety of subjects has been discussed, including such questions as the prohibition of the employment of women in the mining industry, legal prohibition of the employment of children under fourteen years, inspection of mines, nationalization of mines, old-age pensions, the eight-hour day, and minimum and maximum wage scales. The congress has no power to compel the organizations represented to obey its mandates, but resolutions adopted by unanimous vote are considered morally binding and exert strong influence, to say the least, over the miners' unions in each country. The maintenance by the miners of the world of a central office in charge of a permanent secretary has been suggested but so far has not been adopted.

One effect of the congress has been to stimulate the workers in backward countries to raise the conditions of labor

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<sup>63</sup> Brauer-Zeitung, January 21, 1893.

<sup>64</sup> American Federationist, October, 1903, pp. 1052-1053, 1128.

<sup>65</sup> Report of the President, in Minutes of the Fifteenth Annual Convention, 1904.

toward the standard which prevails in more progressive countries. "The greatest possible difference exists, for example, between the wages of miners in various parts of Europe. In Great Britain the wages have been relatively high, until the last year or two, comparing not unfavorably with the wages of American miners. In France and Belgium, however, wages are much lower, and in certain parts of Germany, notably in the eastern or Silesian district, and throughout Austria, the rate of remuneration is so low that the workingman cannot live in decency, and in many cases cannot maintain himself in physical vigor."<sup>65</sup> The delegates to the congress from the less progressive countries have carried back home the report of better conditions in other lands, and in consequence have stimulated their compatriots to develop their unions and to bring wages up to a higher level. The congress has also urged the unions of the less advanced nations to agitate for the adoption of progressive labor legislation by the state. Partly as a result of its efforts, the work of women inside the mines has been prohibited by practically all the countries represented. Many women in Europe pick slate and do other rough work outside the mines, but almost none are employed inside.

Perhaps the most important achievement of the congress, certainly the one of greatest interest to the American delegates, was the adoption in 1906 of the uniform transfer card recognized by the organized miners of the world.<sup>66</sup> The United Mine Workers and other American unions which do not collect an initiation fee from members of European unions had great difficulty in determining whether the transfer cards presented by foreign miners were genuine or not. The cards differed greatly in form, and were printed in many languages, frequently unintelligible to local union secretaries. Sometimes non-union miners sought admittance to the local unions of the United Mine Workers of America upon the presentation of cards issued by other than miners' unions in their own countries. Sometimes

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<sup>65</sup> United Mine Workers' Journal, September, 1904; July, 1906.

<sup>66</sup> Report of the President, in Proceedings, 1907.

passports or books issued by fraternal societies were offered. Much time and trouble was consumed in verifying cards by correspondence with the European organizations. Sometimes members of bona fide miners' unions in Europe were refused admittance because the American association feared that they were impostors. Occasionally, when the officers of the central organization found the card to be authentic and instructed the local union to accept it, the latter, still suspicious, refused to do so, and complied only when threatened with revocation of its charter. The result was friction within the organization. The foreign miner whose card was not recognized or was recognized only after a long delay thought that he had been discriminated against as a foreigner, bore a grudge against the American organization, and became perhaps strongly anti-union in feeling.<sup>67</sup> The inscription on the transfer card adopted by the Miners' Congress is printed in a number of languages, and the difficulty of verification, which has troubled so greatly the American unions of miners, has thus been obviated.

Undoubtedly the world-wide trade union, if it is ever formed, must be a very loose confederation at first, with advisory rather than mandatory powers. But the early national and continental unions in the United States were likewise loose confederations at first, and as the national and the continental unions have developed their functions and in many cases have become centralized, so also, with the growing economic interdependence of all parts of the world, highly centralized world federations may some day be evolved.

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<sup>67</sup> Report of the President, in Minutes of the Seventeenth Annual Convention, 1906.

## PART II

### THE CENTRALIZATION OF CONTROL

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#### CHAPTER V

##### THE DECLINE OF THE SHOP MEETING AND OF THE DISTRICT UNION

A crucial problem in the government of the American trade union has been the proper division of powers between the international, district, local, and shop organizations. The movement has been steadily toward the centralization of authority in the larger federal bodies. This centralization has been accomplished, however, only after a long and a bitter struggle.

First, in point of time, was the struggle for supremacy between the shop organization and the local union. The shop meeting surrendered its control over collective bargaining with extreme reluctance. For many years in some trades the workers in each establishment bargained with their employer concerning their own wages, hours, and other conditions of labor. In consequence of this decentralized policy, competing factories in the same community often had widely different wage scales and hours of work. As late as the period immediately following the Civil War such variations existed even in unions which, like the Iron Molders, now conduct collective bargaining on a national basis.<sup>1</sup> The desirability of uniform conditions of employment has become so obvious, however, that almost everywhere control over such matters has been absorbed by the

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<sup>1</sup> International Journal [Iron Molders], May, 1866, p. 62.

local or federal unions of the trade. There are a few exceptions. The Ladies' Garment Workers, for example, who are paid by the piece, permit each shop committee to fix the rate of wages with its employer. This practice is necessary because the piece rate varies between factories and from day to day in each factory, according to the constantly changing styles of ladies' garments. The Hatters pursue a similar decentralized policy. Methods of production are said to vary widely in different hat factories. At the desire of the manufacturers, wages are determined by agreement between the employer and employees in each factory.<sup>2</sup> In the great majority of trades, however, the local union endeavors to secure the same conditions from all employers in the community.<sup>3</sup>

The shop has also surrendered very reluctantly the right to declare a strike, which it exercised in some trades before local unions existed. Even when the terms of the labor contract are admittedly fixed by the local unions, the members of the shop have not infrequently claimed the right to strike when these terms are violated by an employer. But shop strikes have often been hasty and ill-advised. They have been declared with no proper consideration of the prospects of success, no study of the conditions of the industry, of the number of men out of employment, or of the general state of the labor market. It has been sufficient that a grievance existed. For this reason shop strikes have usually failed. On the other hand, when the proposal to strike is submitted to the local union, a large part of those who make the decision are not directly involved in the dispute, and so are not blinded by a sense of personal injury.

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<sup>2</sup> Constitution and By-Laws, 1907, art. v. Minimum rates, both district and national, confine the variations between factories to a narrow range in any particular locality.

<sup>3</sup> Though the Glass Bottle Blowers and the Potters have national scales of wages, they permit a shop committee to fix the rate per piece for any new article not covered by existing agreements. The piece rate for the new article must be submitted for approval to the local union. The members of a shop are sometimes allowed to arrange with their employers details concerning methods of work and other minor matters not affecting cost of production.

Moreover, when benefits are paid to men on strike by local and national unions, naturally those who are taxed demand the right to determine how the money shall be expended. Usually, therefore, shop strikes are forbidden.

There are a few unions, notably the building trades unions, which permit the members working on a particular building to strike when the employer violates any term of his agreement with the union. The men on the building must be vested with such power, declare union officials in the building trades, because the shifting character of the work makes prompt action necessary. By the time the consent of the local union can be obtained the building, they say, will be finished, and the men scattered in various parts of the city. At the same time, since only a small fraction of the trade is employed on a single building, the financial burden of paying strike benefits is light, and the failure of the strike is not a fatal blow to the union. Nevertheless, with the rise of large contractors and with the formation of employers' associations to fight or bargain with the union, each strike in the building trades is tending to involve an ever increasing number of men, working on not one but many buildings. There is a tendency also for an insignificant struggle begun on one building to spread until the workers on many buildings in the community are involved. For these reasons the building trades unions are beginning to make some efforts to control shop strikes.

Though distinctly forbidden, unauthorized shop strikes have continued to occur. As late as the convention of 1880, the president of the Cigar Makers' International Union reported their frequent occurrence to the general convention, and declared that the local unions were impotent to prevent them. "After the shop struck," he said, "the union calls a special meeting for the purpose of sustaining its action. There is no choice under these circumstances, the men having once gone out, because, in fact, the union fears to act otherwise."<sup>4</sup> In conformity with suggestions of the

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<sup>4</sup> Cigar Makers' Official Journal, October, 1880, p. 2.



president at this convention, Local Union No. 144 of Cigar Makers in New York City passed a stringent rule designed to prevent the unauthorized shop strike.<sup>5</sup> It provided that when an "organized shop" went on strike without the sanction of the local union, the president of the union should request the men involved to return to work. If they refused, he should advertise for non-union men and fill their places. To insure the performance of this disagreeable task by the president, the law further provided for his removal from office should he fail to inflict such punishment. As might have been predicted, after the passage of this rule the New York local unions had much less difficulty with rebellious shops. Similar rules have been adopted by local unions in this and other trades, but even at the present day the members of a shop occasionally declare unauthorized strikes.

In many organizations the members of a shop may endeavor through a committee to adjust disputes with employers by peaceful means. In other unions, however, they may not even perform this function. All alleged violations of agreements and other grievances must be submitted immediately to special or standing boards of conciliation created by the local unions, which take up the matter with the employer.

The shop is now primarily a convenient administrative unit for the transaction of a limited number of executive functions especially delegated to it by the local union. Certain officials, elected sometimes by the shop, sometimes by the local union, collect dues, affix the label to union-made goods, and perform other carefully specified duties.

The division of function between district and national unions has not been a difficult problem, since most state and district unions have been created by the national organizations to exercise certain very limited, specially delegated powers. Among the coal mine workers, however, state and district unions existed for many years prior to the formation

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<sup>5</sup> By-Laws of Local Union No. 144 of New York City, adopted 1883, art. x, sec. 11, in Cigar Makers' Official Journal, August, 1883.

of national unions, and after the permanent establishment of a national union in the year 1885 these bodies refused stubbornly to be stripped of any of their powers. From 1885 to 1898 the national union of coal mine workers possessed no real function and hung together as by a thread. A joint conference board on which were represented the miners and operators of Indiana, Illinois, Ohio, Pennsylvania, and West Virginia was indeed created in 1885 to equalize wages and other conditions of employment in these five States, but it was discontinued in 1887. The officers of the national association attempted to equalize wages by organizing unions and urging the miners to strike for higher wages in districts where the scale was exceptionally low. Usually the national officers were also present at the state or district conference between employers and employees, and exercised a general oversight over such agreements, but the influence which they exerted was very slight. In 1890 a strike fund was created. The effort to maintain it was abandoned after a year or two, and strikes were again supported by the several state associations.

The national organization was held in such little esteem by the miners in the Pittsburg district that in 1891 they debated hotly the advisability of withdrawing from it. The vote on the question at the district convention resulted in a tie, and was finally referred to the local lodges. Secession was in fact only narrowly prevented. During the next two or more years the dissolution of the central union was frequently urged by writers in the official journal. "The national association," they declared, "is useless. Better conditions, whenever secured, have resulted from the activity, not of the national, but of the state and district unions." With little excuse for its existence, the confederation did manage to hold together even through the troublous times following the panic of 1893.

Since 1898 the powers of the national union have grown considerably. The interstate conferences were renewed in that year, and with greater regulation of the terms of the labor contract there has developed greater control over the

declaration and conduct of strikes. The interstate agreement applies, however, only to the States of Illinois, Indiana, Ohio, and to western Pennsylvania. To be sure, the scale fixed for miners in these States has been used as a basis for wages paid in outlying coal fields;<sup>6</sup> moreover, since 1904 an interstate agreement has been maintained by the miners and operators of Missouri, Kansas, Arkansas, Indian Territory, and Texas,<sup>7</sup> but there is no prospect that the wish of leaders among the miners for a national joint conference of coal operators and their employees will be fulfilled in the near future. The United Mine Workers of America is, therefore, still a loose confederation. As yet, much of the collective bargaining is conducted by the district unions, and many of them maintain strike funds of equal or larger amount than that of the national association.

The importance of the district union among the Miners is, however, exceptional. In other trades it exercises its powers, which are chiefly administrative or judicial, at the discretion of the national union. Its acts and decisions are usually reviewable and reversible by the larger federation. In only one out of five international unions which vest the district organization with judicial power to consider appeals by members from decisions of the local societies is the verdict of the district association final.<sup>8</sup> In only two out of the forty-nine unions which vest the district unions with some control over the declaration and conduct of strikes may the district organization call a strike supported from the national treasury without the sanction of the national association.<sup>9</sup> If the district union opposes the declaration of a strike desired by a local society, its action is usually final, though

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<sup>6</sup> Proceedings of Annual Joint Conference of Coal Miners and Operators of Illinois, Indiana, Ohio and Pennsylvania, 1898-1906.

<sup>7</sup> Minutes of the Fifteenth Annual Convention of the United Mine Workers of America, 1904, p. 27.

<sup>8</sup> The Teamsters.

<sup>9</sup> The Amalgamated Iron, Steel and Tin Workers of America and the International Tin Plate Workers' Protective Association of America. One of the four members of the district board, which in these two unions has authority to declare strikes, is, however, a national official, namely, a national vice-president, who by reason of that office serves as executive head of the district.

the Boot and Shoe Workers and a few other unions provide that the local society whose application has been refused may appeal to the international executive board.

The creation of district unions, while not reducing the power of the national associations, does greatly limit the powers of the local societies. The district organizations have stripped the local unions of nearly all control over the conditions of employment in those trades where national collective bargaining is impracticable. In forty-nine out of eighty-six unions whose rules require the formation of district unions the local union may not even ask the national union to give financial support to its strike without securing the consent of the joint executive board or of a joint mass-meeting of all local unions in the district. Moreover, the district unions, which are frequently charged with the enforcement of national rules, have made the control over local unions by the national federations much more effective.

The growth in the power of the district unions has not been accepted by the local societies without a protest. At times, they have refused to send representatives to the joint council of the district or have refused to obey its enactments. When such rebellion occurs, the national union is usually appealed to, and it enforces obedience to the mandates of its subordinate federation by threat of fine or expulsion.

## CHAPTER VI

### THE ABSORPTION OF POWER BY THE NATIONAL UNION

The early national unions were decentralized. Some of them had not even the unity of confederations, but were rather conferences of independent bodies. So slight, indeed, was the tie that the national unions were conceived to be composed not of allied local societies, but of the officers and delegates to the representative assembly. This conception is reflected in the following section from the first constitution of the Printers:<sup>1</sup> "The members of the National Union shall be composed of its elective officers and the representatives from subordinate unions acting under legal unreclaimed warrants granted by the National Union." An almost identical clause is found in the first national constitutions of the Iron Molders<sup>2</sup> and of the Bricklayers,<sup>3</sup> and the same idea is expressed in the preamble to the rules of the early Machinists' and Blacksmiths' Union.<sup>4</sup> When these national unions became more firmly established and began to exercise important functions, this conception was rapidly lost.

The national and international unions exercise specially delegated powers. All powers not so specially delegated are reserved to the local unions. In all unions the number of functions exercised by the central federation has increased with greater or less rapidity, but some associations are still greatly decentralized. Others have absorbed nearly all powers until the subordinate unions exist primarily to administer the functions of the national union according to detailed rules fixed by that body.

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<sup>1</sup> Constitution, 1851.

<sup>2</sup> Constitution, 1859, in Proceedings, 1859.

<sup>3</sup> Constitution, 1867.

<sup>4</sup> Machinists and Blacksmiths' Journal, April, 1872, p. 593.

The national unions have first encroached on the powers of the local societies by adopting rules governing the admission of members. Even before national unions existed, journeymen bearing "travelling cards" indicating membership in some local society of the trade were admitted by other societies without payment of an initiation fee. All national unions have continued this policy, and their earliest rules were those regulating the issuance, presentation, and acceptance of travelling cards. The regulations governing the card system were declared by the president of the International Typographical Union in 1867 to be the only legislation which "had the tendency to bind together union printers with the bonds of fraternal communion and friendly alliance." In fact, from 1852 to 1884 such regulation was practically the sole function of the federal organization of the Printers.<sup>5</sup>

The willingness to accept without question a workman bearing a card from another local union logically involves the acceptance of uniform regulations regarding qualifications for membership. When a difference of opinion exists between the local unions concerning the proper qualifications for membership, regulation by the international association becomes necessary. When, for example, the molding machine was introduced into cigar factories, some local unions admitted to membership the workers on these machines. Others refused to do so. Therefore, regulation by the national union became essential, and about 1876, after several years of bitter controversy, a rule was introduced to the effect that no local union should reject an applicant to membership on account of the condition of working. The rules governing qualifications for membership in the Cigar Makers' Union were declared in 1876, twelve years after the founding of the federal society, to be "the only law in the international constitution which warrants equity of principles within the different unions."<sup>6</sup>

The maintenance of a travelling card has also rendered

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<sup>5</sup> G. E. Barnett, *The Printers*, p. 35.

<sup>6</sup> *Cigar Makers' Official Journal*, March, 1876.

expedient the national regulation of the amount of the initiation fee required by the local unions. Otherwise, a journeyman wishing to join a society having a higher fee than others may evade paying the difference by going to a nearby society with a lower entrance fee, drawing a travelling card, and then becoming a member of the union with the high fee, simply by depositing his card.

Rules governing the admission of members have been adopted by all national unions, and in some of them these rules constitute the sole or chief legislation limiting the power of the local unions. Regulations concerning the use of the travelling card are to be found in the constitutions of all national organizations, and the qualifications for membership are carefully defined whenever there is dispute as to the kind of workmen that shall be admitted. The local societies have objected with much earnestness, however, to the establishment of a uniform initiation fee. The strong local union which wishes to deter non-unionists from joining the society objects to a uniform fee of lower amount than the one which it charges. The weak local union which wishes to secure new members objects seriously to the establishment of a higher fee. About three fourths of the one hundred and thirty national and international associations studied have, indeed, attempted to regulate the amount of the initiation fee, but only thirty-six, or about twenty-eight per cent, have adopted a uniform fee for all branches. Forty-nine have established a minimum, ranging from one dollar to fifty dollars. Ten have set a maximum and a minimum limit. Though local societies have objected strenuously to any interference with their internal affairs, their government and their finances have been reorganized frequently by the national unions. Federal organizations have thus interfered in order to secure the good administration not only of national activities but, at a later stage, of purely local activities as well.

The cooperation of the local unions is required to administer most national functions. Since the general officers

at headquarters cannot very conveniently act at the trial of a member living in some community many miles away, members must be tried for violation of national rules by local tribunals. The early national unions needed the cooperation of local societies to maintain their first activity, namely, the travelling card, which admitted members of one constituent society to any other without payment of an initiation fee. They needed such cooperation even more when they began to pay national sick, out-of-work, strike, and other benefits. To be sure, the death benefit, consisting of a single lump payment, is awarded usually by some national officer who bases his decision on the physician's certificate, affidavits as to name, age, date of birth, date of admission to union, and other data submitted by the subordinate societies. But sick and out-of-work benefits and the system of advancing loans to members who wish to travel in search of work must be administered by the local unions. The reason is that the international officers cannot make the many small, consecutive payments required for the maintenance of these activities without grave inconvenience, nor can they detect fraud on the part of the beneficiaries. Even local officials who are personally acquainted with the applicants, who have complete opportunity for investigation and every desire to administer honestly and efficiently, can detect them only with great difficulty.

[Again, to insure the prompt payment of sick or out-of-work benefits by the local officers, the national union desires to keep funds constantly on deposit in the treasury of the constituent societies. Most federal organizations prefer to endure the delay rather than entrust funds to the local unions; but the Elastic Goring Weavers' Amalgamated Association, which pays sick and out-of-work benefits, the Cigar Makers' International Union, which makes loans to travelling members and pays sick and out-of-work benefits, and the Piano, Organ and Musical Instrument Workers' International Union, which, though a close imitator of the cigar makers' organization, pays only sick benefits, have felt



compelled to entrust the local societies with all national funds. Moreover, the Iron Molders' Union, the only remaining association paying an unemployment benefit, entrusts the local unions with all funds set apart for the payment of such out-of-work benefits.

The local union's method of conducting national activities or of administering justice must be carefully regulated, otherwise it is apt to be lax and inefficient. The judicial decisions of the subordinate societies are often arbitrary and unfair. Accused members are sometimes not given full opportunity for defense, and the penalties inflicted are often disproportionate to the misdemeanor. Certain violations of the rules, such as the failure to pay dues or the presentation of fraudulent claims, are condoned. Other violations, such as the acceptance of employment in "scab" or non-union shops, are summarily punished by expulsion or by fines so heavy that the delinquent is not able to pay them. The efforts of early national unions such as the Iron Molders<sup>7</sup> or the Cigar Makers<sup>8</sup> to loan money to travelling members or to pay sick or out-of-work benefits failed because they left the administration largely to the discretion of the local unions. Subsequent attempts of the federal associations of iron molders and cigar makers were successful because they had gained much greater control over the subordinate societies, and could prescribe in minute detail who should administer and how they should administer the international activities. When necessary, these associations have created local officers to perform such services, and have also provided for travelling international officials who visit the subordinate societies and enforce efficient administration. Indeed, the successful maintenance of sick and out-of-work benefits and of the system of loans to travelling members requires such close supervision over local administration that

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<sup>7</sup> Early in the history of the Iron Molders' Union a system of loans to travelling members was abolished after a short trial (Constitution, in Proceedings, 1860; Report of the President, in Proceedings, 1866).

<sup>8</sup> For a similar attempt by the Cigar Makers, see Cigar Makers' Official Journal, August, 1887.

only a few strongly centralized federal associations attempt to maintain these activities.

The next stage—regulation to promote the efficient administration of purely local functions—followed naturally. Very early in the history of national unions, members were permitted to appeal from decisions of the subordinate unions in cases involving not only national but also local rules. One hundred and four of the one hundred and thirty national unions pursue this policy at the present time. Sixty-nine of the one hundred and thirty unions prescribe the method of procedure at trials of members in the local unions, and this procedure must be followed in cases involving local as well as national rules. One small group of four associations prevents excessive fines by fixing the maximum fine which the local unions can impose,<sup>9</sup> and six others require the ratification of all fines over a certain amount by the central authorities.<sup>10</sup>

About sixty of the one hundred and thirty organizations studied regulate local receipts and expenditures. Unionists are reluctant to pay high dues, and in order to force the subordinate societies to collect sufficient revenue to perform their functions adequately, all of the above sixty organizations regulate the amount of dues. Forty-one, or about two thirds, simply fix the minimum amount of the dues.<sup>11</sup> The remaining nineteen international associations fix uniform dues, and nine of these also fix uniform initiation fees. Some of these nineteen international unions attempt to determine also how the local unions shall spend the money which they collect. The Cigar Makers and the Piano, Organ and Musical Instrument Workers thus limit local expenditures to certain carefully enumerated administrative purposes,—postage and supplies, rent of meeting-room, offi-

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<sup>9</sup> Brewery Workers, \$25, Granite Cutters, \$50, Marine Engineers, \$25, Stationary Engineers, \$2.

<sup>10</sup> Cigar Makers, \$10, Piano, Organ and Musical Instrument Workers, \$50, Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers, \$25, Shingle Weavers, \$10, Steam, Hot Water and Power Pipe Fitters and Helpers, \$25, Steel Plate Transferrers, \$25.

<sup>11</sup> One association fixes the maximum amount.

cers' salaries, and so on. The Boot and Shoe Workers limit them to what is rather vaguely termed "running expenses." Seven associations regulate the purposes for which the local unions may levy assessments. Another, composed of steam-shovel and dredgemen, requires that all local assessments must be approved by the international executive board. Two others, the international unions of cigar makers and of piano and organ workers, forbid the subordinate unions to levy assessments for conflicts with employers not sanctioned by the federal associations. This rule is a most effective measure in centralizing control over strikes.

Forty-nine of the one hundred and thirty international unions provide a form of by-laws for subordinate societies, and a number of others enumerate the list of officers or attempt some other limited form of governmental regulation. These by-laws are, however, not always mandatory, but are rather for the guidance of the local unions, particularly the new ones, whose members usually have very crude ideas concerning proper methods of government. Very commonly, indeed, they are closely copied by the subordinate societies, though sometimes with the consent of the central authorities a local union adopts a wholly different set of rules.

A bitter and protracted struggle between the national and local unions has occurred over the control of strikes. In all trades the local union has slowly but surely lost ground, though even today in only a few organizations is the strike policy dictated absolutely by the federal association.

The need of stricter control over local strikes was demonstrated very early in the history of national trade unionism. At meetings of local unions workmen have not so often rushed into a struggle without taking thought as they have done at shop meetings. They have stopped to discuss the matter. Nevertheless, as in the case of the shop meeting, the appeal of the cause rather than the prospect of success has been their chief consideration. The meetings called to decide whether or not to declare a strike are often influenced by emotionalism, enthusiasm, and excitement.

Fiery orators declaim about the wrongs of labor, and declare that the threatened reduction in wages must be resisted since the union can never retreat, or that the principle of the closed shop is the backbone of trade unionism and must be upheld at any sacrifice. Questions of expediency, such as the amount of money in the treasury, the prosperity of the industry, or the number unemployed, have been too frequently overlooked.

When the international unions exercised little or no control over strikes, the local unions almost invariably entered blindly into utterly hopeless conflicts against reductions in wages during industrial depressions. The experience of the Mine Workers during the depression following the panic of 1873 affords an illustration. The National Miners' Association, established in 1873, maintained a strike fund but showed little discrimination in awarding strike benefits. The local union nearly always rushed into a strike, and then dispatched its leaders to the headquarters of the federation for financial aid. Declaring that they were fighting the battles of the miners of the United States, they would pray the national union to save them from the grasping and tyrannical companies. If there remained any money in the national treasury, such a request was usually granted.<sup>12</sup> The strikes of the miners at Johnstown, Pennsylvania, and in the Hocking Valley during 1874, those in the anthracite coal regions of the Shenango Valley of Pennsylvania, in the Mahoning Valley and the Tuscarawas Valley of Ohio, and in the mining district of Brazil, Indiana, in 1875 were all fought with vigor. But they failed. With hundreds of miners in the same and adjoining fields out of work and eager to fill the places of the strikers, such struggles had to fail.<sup>13</sup> Within eighteen months the national treasury had been exhausted, and so completely had the resources of the local unions been drained that further requests for assessments and voluntary contributions elicited no response. Coal miners in all parts

<sup>12</sup> National Labor Tribune, November 7, 1874; July 10, 1880, p. 4.

<sup>13</sup> Iron Molders' Journal, February 10, 1878.

of the country were forced to sever their connection with the union, and the national organization, which had been established so auspiciously a few years before, went completely to pieces.

Similar conditions existed in the Cigar Makers' International Union at this time. By a rule enacted prior to the panic of 1873 the international executive board had no authority to refuse financial aid to any local union that wanted to resist either a reduction in wages or the imposition of conditions contrary to the rules of the association. Only in case the local union wished to strike for an increase of wages did the board have authority to withhold funds. When the industrial depression came, the executive board, helplessly tied by these restrictions, had no power to prevent the members from plunging recklessly into strikes, though they knew such a course to be suicidal.<sup>14</sup> The Cigar Makers' International Union was not destroyed, but it lost sixty-seven local unions and nearly three thousand members in three years. It emerged from the depression weak, scarcely able to hold together, with only seventeen local unions and a membership of about one thousand. The one organization with a somewhat centralized control of strikes—the Iron Molders' Union—alone emerged, not, indeed, wholly scathless, yet in fairly prosperous condition and able to resume a belligerent policy immediately with the beginning of better times. The Iron Molders had already learned their lesson during the panic following the beginning of the Civil War.

Even if the local unions do consider very carefully the prospect of success, they are not in a position to determine how far the state of the industry warrants the declaration of a strike, since conditions of which they are ignorant in distant parts of their own country or in other countries may render their strike a total failure. For example, the large strikes of the Stone Masons and the Carpenters and Joiners in England during 1877 failed because of neglect to take into consideration conditions in other parts of the world.

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<sup>14</sup> Report of the President, 1875. See also Cigar Makers' Official Journal, November 10, 1880, p. 2.

The union of each trade embraced nearly the whole of the craft, and had accumulated a very large strike fund; but both strikes failed because the depression on the Continent and in America had thrown such a large number of men out of employment that the English contractors were able to import workmen from foreign countries to take the place of the strikers.<sup>15</sup> On the other hand, the national officers usually receive monthly reports concerning the state of the trade from all parts of the United States and even from other countries. With this broader outlook, they are able to formulate an effective strike policy. In the cigar industry, for example, the union has been less successful in its struggles with employers during the dull season of the trade from November 1 to April 1. Since 1882, with stricter control over such conflicts by the international union, all strikes for an increase in wages have been refused financial support during these months of the year.

The degree of control over strikes exercised by the national organizations varies greatly. One group of some seventeen national unions, most of them weak and newly organized, exercises no control whatever.<sup>16</sup> They offer no financial aid to workers on strike, and do not interfere with the freedom of action of the local unions. One hundred and thirteen unions make some attempt to regulate strikes, but eighty-one of these maintain control only over strikes supported by the funds of the national union. These organizations maintain the right to determine when strikes shall be supported. They require that local societies to whom such aid is granted must conform to certain regulations designed

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<sup>15</sup> Report of the President, in Proceedings of the Cigar Makers, 1885.

<sup>16</sup> These are the following unions: Barbers, Blast Furnace Workers and Smelters, Commercial Telegraphers, Composition Roofers, Damp and Waterproof Workers, Electrical Workers, Hod Carriers and Building Laborers, Letter Carriers, Marine Engineers, Print Cutters, Railway Clerks, Shipwrights, Joiners, Caulkers, Boat Builders and Ship Cabinet Makers, Slate and Tile Roofers, Stationary Engineers, Steel Plate Transferrers, Wall Paper Machine Printers and Color Mixers, Window Glass Cutters and Flatteners, and Window Glass Workers.

to protect the conservative majority from being overruled by the radical minority on the question of declaring strikes, designed also to lead, if possible, to the peaceful adjustment of disputes with employers, and otherwise to prevent unnecessary or inexpedient strikes. In all of these eighty-one organizations the local unions may strike when and how they please, provided all the expenses of the struggle are paid from the local treasury.

When the national union exercises control only over strikes supported from the central treasury, the effectiveness of this control depends on the strength of the local union's desire for financial aid. The strength of the local union's desire is determined in turn by the adequacy of the aid given by the international association and by the ability of the local union to conduct its conflicts with employers without such assistance.

During the early years of many of the older associations their contributions for the support of strikes were wholly inadequate. For example, the federal associations of cigar makers and iron molders at first merely solicited voluntary donations from the constituent societies. Later, financial assistance was promised for all strikes sanctioned by the national authorities.<sup>17</sup> No benefits of definite amount were guaranteed, however, nor was any reserve fund created for their payment. Special assessments were levied whenever money was needed, but the amount of these assessments was small. Moreover, the local unions, bound by very slender ties to the central organization, were very dilatory in making payments, and sometimes neglected to do so altogether. The sum collected was, therefore, frequently quite insufficient for the maintenance of a strike, and was often not available until several weeks after it had been declared. Later on the majority of the associations fixed the strike benefits at a definite amount, but adequate reserve funds from which to pay them were created tardily.

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<sup>17</sup> Constitution of the Iron Molders' Union, 1863, in Proceedings, 1863; MS. Report of President, in Proceedings of the Cigar Makers' International Union, 1866.



The first important union to adopt this policy was the Granite Cutters, who, affected indirectly by the influence of the English unions, not only offered strike benefits of definite amount at their first national convention in 1877, but also made adequate provision for the accumulation of a fund from which to pay them.<sup>18</sup> The Iron Molders' Union, founded eighteen years earlier, did not establish an emergency strike fund for the payment of strike benefits until 1882, and not until 1890 did it abolish the system of special assessments, and set aside a fixed proportion of the monthly dues for the maintenance of a permanent strike fund.<sup>19</sup> The Cigar Makers' International Union, established in 1864, did not give adequate support to strikes until after the reorganization of its finances according to the English system in 1880.<sup>20</sup> In these early international unions, therefore, the local unions relied for some years on the federal association merely for supplementary aid in their conflicts against employers. Frequently they embarked on strikes without consulting the international officials, and appealed to them for assistance when the exhaustion of their own funds seemed imminent. Under such conditions very limited control could be exercised by the federal association over the declaration and conduct of strikes.

At the present day, many international associations make very inadequate provision for the support of strikes, and hence exercise very limited control over them. Three unions solicit merely voluntary contributions from the local unions.<sup>21</sup> The table on the next page shows the degree of adequacy of the strike benefits guaranteed by one hundred and ten organizations.

Only sixty unions give strike benefits of definite amount, and but thirty-four of these maintain a reserve fund from which to pay them. Moreover, while the reserve fund is large in a few associations, amounting sometimes to one

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<sup>18</sup> Constitution, 1877.

<sup>19</sup> Constitution, 1882; Constitution, 1890.

<sup>20</sup> Constitution, 1880.

<sup>21</sup> These are the following unions: Cutting Die and Cutter Makers, Rubber Workers, and Wire Weavers.



Character of Strike Benefit	Number of Organizations	Number Maintaining Reserve Fund for Strikes
Weekly strike benefit of definite amount guaranteed.....	60	34
No weekly strike benefit of definite amount guaranteed.....	44	9
Amount of maximum strike benefit fixed.....	5	4
Amount of minimum strike benefit fixed.....	1	0
Total.....	110	47

half million or one million dollars, in others it is absurdly small.<sup>22</sup> After its exhaustion, which occurs during the early stages of a strike, recourse must be had to the method of special assessments.

The remaining fifty associations pay such sums as the funds in the treasury justify. Thirteen of them, however, maintain a strike reserve, and give probably as adequate aid to the local unions in their conflicts as those which promise a definite benefit. One of the fifty associations gives no aid, however, until the local union has exhausted all of its own funds,<sup>23</sup> and the proportion contributed by many of the others is undoubtedly small. In many, therefore, of the eighty-one unions which attempt to regulate only strikes

<sup>22</sup> Six associations provide that a certain proportion of the per capita tax must be set aside until a strike reserve fund of the following amounts has been accumulated:—

Street and Electric Railway Employees.....	\$1,000,000
Railway Trainmen .....	300,000
Locomotive Firemen .....	250,000
Railway Conductors .....	200,000
Elevator Constructors .....	50,000
Stone Cutters .....	4,000

Five associations do not allow their strike reserve fund to sink below the following minimum amounts:—

Granite Cutters .....	\$25,000
Tin Plate Workers .....	10,000
Plasterers .....	4,000
Slate Workers .....	300
Wood Carvers .....	\$1 per member

<sup>23</sup> Cloth Hat and Cap Makers.

maintained by funds from the central treasury such conflicts are supported financially by and hence are controlled largely by the local societies.

The most advanced stage has been attained by the twenty-nine organizations which require that no strikes, whether supported from local or national funds, can be declared without the consent of the national authorities,<sup>24</sup> and sixteen couple the prohibition with the threat to expel the local union or to fill the places of the strikers with union men if this rule is not observed. All of the twenty-nine unions require also that the national regulations regarding the declaration and conduct of strikes must apply to all such conflicts without exception. In addition to the above unions, the Boot and Shoe Workers forbid unauthorized strikes in factories using the union label, and the Garment Workers forbid such strikes when the firm recognizes the union or when more than twenty-five members are involved. The Cloth Hat and Cap Makers forbid the local union to strike without the consent of the national union when all of its members are involved.

The trades which vest control over strikes in the national unions are those engaged in transportation, such as the Seamen or the Railroad Trainmen, and those producing a commodity with a wide territorial market, such as the Iron, Steel and Tin Plate Workers, the Mine Workers, and the Hatters. These trades desire centralized control over strikes for several reasons. In the first place, with the growth in

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<sup>24</sup> The local unions are forbidden to strike without consent of the international authorities in the following trades: Atlantic Coast Seamen, Compressed Air Workers, Glove Workers, Hatters, Iron, Steel and Tin Workers, Machinists, Maintenance-of-Way Employees, Meat Cutters and Butcher Workmen, Molders, Paper Box Workers, Pavers, Printers, Quarry Workers, Railroad Telegraphers, Railroad Trainmen, Railway Employees, Railway Expressmen, Retail Clerks, Saw Smiths, Slate Workers, Stove Mounters and Steel Range Workers, Street and Electric Railway Employees, Switchmen, Tin Plate Workers, United Mine Workers, Window Glass Workers, and Wire Weavers.

The Cigar Makers and the Piano, Organ and Instrument Workers do not expressly forbid such conflicts, but prevent them indirectly by prohibiting the local societies from collecting or expending money to support strikes not sanctioned by the international union.

the size of the business establishment and the rise of employers' associations, strikes involve numbers too large to be maintained from local funds, and the creation of an adequate national fund for this purpose becomes necessary. Thus in the Cigar Makers' International Union the development of a central strike fund from about 1880 corresponds in time to the growth in the size of the business establishment following the introduction of machine processes.<sup>25</sup> The inauguration of a central strike fund by the Iron Molders in 1890 followed quickly the formation of the National Defense Association, organized to wage war on national lines against the Iron Molders' Union. In consequence of a prearranged plan on the part of the stove founders, the strike began in 1887 in a single shop in St. Louis, and spread rapidly to other shops controlled by the Defense Association until five thousand molders in fifteen cities were involved. Against such united opposition on the part of employers the local unions are powerless to struggle. Within recent years, therefore, all strikes of Iron Molders have been maintained from national funds.<sup>26</sup> In the second place, in trades producing for a wide territorial market the final stage—prohibition of unauthorized strikes—has resulted from a desire, first, to prevent the declaration of strikes in violation of national agreements, and, second, to prevent unwise disastrous conflicts which cause reductions of wages not only in the community where a strike is declared, but sympathetically in other communities also.

Contrarily, in trades serving a local market strikes are usually managed by the local unions, first, because conditions of employment in one place are not much affected by those in another, and second, because, the size of the business establishment being small, strikes involve usually only a few workers and can be maintained from local funds. For

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<sup>25</sup> Report of the President, in Cigar Makers' Official Journal, October, 1881, p. 4.

<sup>26</sup> F. W. Hilbert, "Trade Agreements in the Iron Molders' Union," in *Studies in American Trade Unionism*, ed. by Hollander and Barnett.

this reason, strikes in the building trades are supported financially by and hence are controlled very largely by the local societies. Thus, the strike benefits given by the Bricklayers' and Masons' International Union, formed in 1866, have always been wholly inadequate in amount, and have been paid from revenue collected by the unsatisfactory method of special assessments. The local societies have relied almost wholly on their own resources, and have appealed very rarely to the international union for aid. For example, from 1871 until 1880 not a single strike received the financial support of the Bricklayers' and Masons' International Union, though provision for such support existed in the constitution. From 1880 to 1890, on the average only one strike each year was supported by the federal association, though strikes of a purely local character occurred frequently. During the hard times succeeding the panic of 1893 there were several years when the international association paid not a single strike benefit, though complaint was made about the number of strikes declared by the local societies at such an inauspicious time.<sup>27</sup> In 1897 this association adopted a rule that a strike must involve all members of a subordinate union before it should receive support from the international treasury. Strikes against an individual firm or against a minority of the employers of a city must be maintained by the local unions.<sup>28</sup>

The policy of the Journeymen Plumbers has been very similar.<sup>29</sup> Very rarely has the international union furnished money for the maintenance of strikes, and in 1900 a rule was adopted to the effect that no aid should be granted from the central treasury unless at least one third of the members of the local society were involved in a strike. The Journeymen Horseshoers' International Union, formed in 1874, whose members work under industrial conditions similar to those in the building trades, does not pay strike benefits of

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<sup>27</sup> Annual Reports of the President and Secretary, 1893-1896.

<sup>28</sup> Constitution, 1897.

<sup>29</sup> Plumbers, Gas Fitters and Steam Fitters' Journal, October, 1895, p. 3; November, 1895, pp. 5-7.

definite amount, but grants aid to local unions when engaged in serious difficulties. The International Typographical Union, a large part of whose members are engaged in meeting the needs of local customers, also made no attempt to pay strike benefits until 1885. Moreover, until a few years ago, the annual receipts from the strike tax were barely sufficient to pay continuous strike benefits to eighty men.

The need of an adequate national strike fund has begun to be felt even in trades producing for a local market, since with the growth of local employers' associations strikes more and more frequently involve all or a large part of the organized members of the trade in a community, and with the establishment of such a fund there has followed national control over local conflicts. But with the exception of the Pavers, Rammers, Flaggers, Bridge and Curb Stone Setters, the Printers, and the Street and Electric Railway Employees, none of the trades serving a local patronage forbid subordinate societies to strike without the sanction of the national authorities.

National unions, particularly in those trades producing commodities with a wide territorial market, have striven from the first years of their organization to establish uniform conditions of employment for all competing manufacturers. The attainment of such uniformity has been a difficult task. The adoption of a national scale of wages was discussed at conventions of the Iron Molders before the Civil War, but not until 1891 was a uniform scale adopted for one branch of the trade, namely, molders working in stove foundries. For other branches of the trade a national scale of wages has never been attained. Apprenticeship rules were adopted at the first national conventions of the Bricklayers and Masons,<sup>80</sup> Granite Cutters,<sup>81</sup> Plumbers,<sup>82</sup> Pattern Makers, and other unions. As all of these

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<sup>80</sup> Constitution, 1867; Constitution, 1876.

<sup>81</sup> Constitution, 1877; Constitution, 1884.

<sup>82</sup> Proceedings, 1891, pp. 25-26; Proceedings, 1896, in Supplement to United Association Journal, vol. 3, no. 1, pp. 40-42; Proceedings, 1898.

found that enforcement was impracticable, the rules were soon abolished, in some cases never to be readopted.

One obstacle to the establishment of uniform conditions of employment has been the inability of the weak local societies to secure as good wages, hours, and other conditions as the strong local unions enjoyed. The Iron Molders' Union began to regulate apprenticeship in 1864, but in 1876 the president of the organization declared that the weak societies had not compelled and probably never would compel the employers to conform to the international apprenticeship rules. Even in recent years, during the existence of national agreements with employers, complaints have been made that these rules were not being enforced by some of the weaker societies.<sup>83</sup> Frequently, indeed, national organizations are forced to exempt certain subordinate unions from the application of rules governing the terms of the labor contract because the effort of these subordinate unions to enforce such regulations would undoubtedly be suicidal. For example, certain new and poorly organized local societies of bricklayers which could not compel employers to accept the nine-hour work day required by the international organization were repeatedly granted extensions of time in which to enforce it. Finally, in 1889, twenty-one local unions whose members were working longer than nine hours had their charters revoked, and for the same reason forty-one applications for new charters were refused. Such severe measures were found inexpedient, and the next convention vested the international executive board with discretion to suspend the application of the nine-hour rule to newly organized societies whenever necessary. This policy of the Bricklayers has been followed by various other trades.<sup>84</sup>

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<sup>83</sup> In 1864 the Iron Molders' Union merely attempted to regulate the term of apprenticeship (Constitution, in Proceedings, 1864). The ratio of apprentices to journeymen was fixed at some time prior to 1874 (Report of the President, in Proceedings, 1876). For recent reports of non-enforcement, see Report of the President, in Proceedings, 1895; Iron Molders' Journal, October, 1904, p. 750.

<sup>84</sup> Proceedings, 1886; Proceedings, 1888; Proceedings, 1889.

Another obstacle in the way of uniform regulation of apprenticeship has been the variation in the methods of working in different places. The length of the working day is not affected, indeed, by such differences, but the term of apprenticeship and the rate of wages are very much affected. Thus, in the cigar making industry the varying degree to which new machine processes and division of labor have been introduced in different parts of the country has made difficult the adoption of uniform apprentice rules. In Florida the Cuban and Spanish cigar makers work almost exclusively by hand. In many sections of the country the "mold" is used on all cigars produced. In Baltimore and other places both hand-made and mold-made cigars are turned out by the same factory. Sometimes one man makes the whole cigar. Sometimes a team of workers is employed; that is, one person makes the filler and another rolls the wrapper. A team worker using the mold can learn how to do his part of the work in a few months, while several years are required to attain skill in making the whole cigar by hand. Evidently, therefore, a uniform apprentice rule for cigar makers in all parts of the country is impracticable.

Similarly, the journeymen who make brooms by machine in a large eastern factory cannot be required to demand the same wages as the hand-workers in the small shops of the West. The cigar maker of the Atlantic Coast, the Pacific Coast, and certain sections of the Middle West who manufactures a high grade of cigars demands a larger wage than his less skilled fellow-craftsman of the Pennsylvania district who makes a cheap grade of cigars. The New England die cutter who makes only shoe die cutters requires less skill and hence receives lower wages than the workers in the shops of New York City where more complicated dies of various sorts are produced. Differences in the cost of living must also be taken into account in fixing wages. Because of such differences, employees of the "meat trust" receive higher wages for the same kind of work in Chicago than in Butte, Montana, or in Kansas City.

Apprenticeship was usually the first of the conditions of employment to be regulated by the federal organizations, and is the one most commonly regulated by them at the present day, probably because in all trades the interurban movement of labor renders local apprenticeship rules wholly ineffective to limit the supply of labor. About fifty unions, most of which are in comparatively unskilled trades, make no attempt to regulate apprenticeship, either locally or nationally. Forty-nine of the remaining eighty trades maintain national apprenticeship rules. The scope of these rules, however, varies widely. Two unions do nothing more than fix the age at which one may become an apprentice. Thirty-two of the remaining forty-seven designate both the term of apprenticeship and the ratio of apprentices to journeymen. The others fix either the term or the ratio, but not both.

The establishment of a uniform working day for all subordinate unions was agitated by the Iron Molders, Machinists and Blacksmiths, Ship Carpenters and Caulkers, Coach Makers, and Bricklayers during the period immediately following the Civil War. One of the purposes of the National Labor Union, a federation of all organized crafts founded in 1866, was to secure the adoption of an eight-hour day by all international trade unions. The early federal organization of coopers ordered that all members work not more than ten hours a day after May 1, 1871.<sup>85</sup> The Painters' Grand Lodge, organized in 1871, started at once an agitation in favor of an eight-hour day for all members of the trade.<sup>86</sup> The Iron, Steel and Tin Workers adopted their first rule regarding the length of the working day in 1880. The Cigar Makers began their efforts at national regulation of the hours of labor in 1881, and the Bricklayers in 1887. Nevertheless, at the present time only a small number of national unions, about eighteen of the one hundred and thirty studied, have a definite rule to the effect that members must

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<sup>85</sup> Coopers' Monthly Journal, December, 1870.

<sup>86</sup> The Carpenter, February, 1882.



not work more than a certain number of hours each day.<sup>37</sup> Two other international organizations fix the number of hours in the working day for manufacturers who have been granted the use of the union label.<sup>38</sup>

The maintenance of national wage scales has been so difficult that even the older organizations have succeeded in establishing them only within recent years. The Glass Bottle Blowers did not have a uniform scale of wages until 1890, and not until that same year did the Iron Molders secure a national scale for stove molders. The Window Glass Workers established a national scale in 1901, the Hatters (for the makers of stiff hats) in 1902, the Potters in 1904, the Garment Workers and the Granite Cutters in 1905. Yet at present more national unions regulate wages than hours of labor. Twenty-five national and international unions regulate the wages of all members,<sup>39</sup> and five others regulate the wages of a certain class or subdivision of their members.<sup>40</sup> Four more require that all employees in factories which have been granted the use of the union label must receive a certain minimum wage.<sup>41</sup>

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<sup>37</sup> These are the following unions: Bricklayers and Masons, Cigar Makers, Cloth Hat and Cap Makers, Coopers, Cutting Die and Cutter Makers, Elastic Goring Weavers, Elevator Constructors, Glass Bottle Blowers, Granite Cutters, Hatters, Locomotive Firemen and Enginemen, Iron Molders, Paper Makers, Pulp, Sulphite and Paper Mill Workers, Plumbers, Print Cutters, Printers, Table Knife Grinders, and Wood, Wire, and Metal Lathers.

<sup>38</sup> The Travellers' Goods and Leather Novelty Workers, and the Carpenters and Joiners for members who are machine wood workers.

<sup>39</sup> These are the following unions: Cloth, Hat and Cap Makers, Compressed Air Workers, Coopers, Cutting Die and Cutter Makers, Elastic Goring Weavers, Flint Glass Workers, Glass Bottle Blowers, Granite Cutters, Iron, Steel and Tin Workers, Lace Operatives, Leather Workers on Horse Goods, Machine Textile Printers, Pilots, Potters, Print Cutters, Saw Smiths, Shirt, Waist and Laundry Workers, Stove Mounters, Table Knife Grinders, Tin Plate Workers, Wall Paper Machine Printers, Window Glass Cutters and Flatteners, Window Glass Workers, and Wire Weavers.

<sup>40</sup> Bill Posters and Billers, for those travelling with circuses; Bridge and Structural Iron Workers, for those working on bridges outside the jurisdiction of any local union; Garment Workers, for the makers of shirts and overalls; Hatters, for makers of stiff hats; Theatrical Stage Employees, for those travelling with theatrical companies and not in the employ of local houses.

<sup>41</sup> Carpenters, for machine wood workers, Cigar Makers, Printers, and Wood Workers.

Fifty-eight national and international unions do not attempt to fix the conditions of employment, and leave all regulation of such matters to the local societies. Fourteen other organizations have adopted national apprenticeship rules, but do not determine the conditions of employment for journeymen. In many of these seventy-two associations, however, the officers and delegates to conventions use their influence to bring about uniformity. Resolutions requesting the local societies not to accept less than a certain wage or to work longer than certain hours have been adopted from time to time by the annual conventions of some of these unions. Thirteen or more of them require that all local agreements must receive the sanction of the international officers, and thus give these officers an opportunity to urge societies lagging behind the others to pursue a more aggressive policy in bargaining with employers. Finally, in those organizations maintaining an adequate strike fund, the officials vested with control over its disbursement promote uniform conditions of employment by supporting the strikes of those societies which have secured less favorable terms than the others. Save in a few instances, however, no very great amount of uniformity has been brought about by any of these methods.

The extent to which the remaining forty-eight national and international unions interfere in matters of collective bargaining is not easy to measure. On one occasion the writer, who had spoken of the many detailed shop rules in the constitution of a certain national organization, was told by its secretary that none of these rules were mandatory. They had been adopted merely to encourage local unions to secure such conditions from employers whenever it should be possible. The same policy has been followed by other unions. Moreover, most national organizations provide the minimum or worst conditions that the local societies are permitted to accept. If the standard set by the national union is very low, most or all of its subordinate societies may have secured better conditions, and hence the national regulations may exert little or no influence.

Two facts are clear, however. In the first place, the extent to which the remaining forty-eight national or international organizations interfere in matters of collective bargaining varies widely. At the one extreme are five national organizations whose only attempt to regulate the conditions of employment has been the adoption of a few shop rules relating to the employment of foremen, methods of work, and other questions of shop management. At the other extreme are four organizations which regulate practically all the conditions of employment save a few minor details which remain under the control of the local union. In the second place, only a small group of national unions—not more than nineteen out of one hundred and thirty—regulate three of the four matters of collective bargaining here considered, that is, apprenticeship, wages, hours, and shop management.<sup>42</sup> Small unions such as the Cutting Die and Cutter Makers, Print Cutters, Saw Smiths, and Wall Paper Machine Printers, particularly if they are concentrated in a limited area (as are the Elastic Goring Weavers and the Table Knife Grinders), have been especially successful in establishing uniform conditions of employment.

Many of the national associations which have been successful in regulating the conditions of employment have not been able to exercise much control over the declaration and conduct of strikes. Regulations concerning the internal administration of the local societies bear little relation to the nature of the employment, and have been adopted by national unions which exert little influence over matters of

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<sup>42</sup> The following unions regulate all four of these matters by collective bargaining: Glass Bottle Blowers, Granite Cutters, Iron, Steel and Tin Workers, and Table Knife Grinders.

The following regulate three matters for all members and the fourth for part of the members: Cloth, Hat and Cap Makers, shop matters only for factories using the label; Hatters, wages only for the makers of stiff hats; Printers, wages only for offices which have the label.

The following regulate three matters of collective bargaining: Cigar Makers, Coopers, Cutting Die and Cutter Makers, Elastic Goring Weavers, Flint Glass Workers, Garment Workers, Iron Molders, Print Cutters, Saw Smiths, Wall Paper Machine Printers, Window Glass Cutters and Flatteners, Window Glass Workers.

collective bargaining. The Cigar Makers and the Iron Molders are centralized in all three respects. The federal organizations of hatters, iron, steel and tin workers, and window glass workers not only fix most of the conditions of employment, but also forbid unauthorized strikes. All of these are old unions whose members are engaged in producing commodities with a wide territorial market. On the other hand, the federal associations of a considerable group of unions are very decentralized. Among these are the Blast Furnace Workers, who, though producing for a national market, are unskilled and were organized very recently; the Bricklayers, who, though organized for many years, serve a local patronage; and the Hod Carriers, who are unskilled, were recently organized, and serve a local patronage.

The early federal trade unions secured little obedience from the constituent local societies, although the requirements were few. The chief obligations to the national union were quarterly or monthly reports concerning the condition of the trade, wages, hours, members admitted, and members expelled, and an account of local receipts and expenditures. Even these few duties were not fulfilled. In 1864 the president of the Iron Molders asked why local officials so persistently neglected to send monthly reports.<sup>43</sup> Ten or fifteen years later the presidents of the Iron Molders were still asking the same question.<sup>44</sup> Frequently, also, dues and special assessments remained unpaid. In 1874 the secretary of the Bricklayers' and Masons' International Union reported that none of the local unions had paid all the quarterly dues during the previous year. One had paid for three quarters, most of them for one or two quarters, a small group had paid nothing at all.<sup>45</sup> In 1873 the Cigar Makers' International Union abandoned for a time its efforts to pay a death benefit because the local unions failed to pay their assessments. On one occasion early in the history of the Brick-

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<sup>43</sup> Report of the President, in Proceedings, 1864.

<sup>44</sup> For example, see Iron Molders' Journal, April 30, 1875.

<sup>45</sup> Report of the Secretary, in Proceedings, 1874.

layers' and Masons' International Union the general president, desiring funds for the support of a certain strike, issued a circular asking for voluntary contributions instead of levying compulsory assessments. A larger number of local unions, he declared, responded to appeals for voluntary contributions than to demands for compulsory assessments.<sup>46</sup>

The local unions were bound to the central association by such slender ties that threat of suspension had little effect in compelling obedience to international rules. Indeed, local unions frequently seceded, sometimes for the flimsiest reasons. Thus, the Cincinnati society of cigar makers seceded from the international union of the trade about 1876 because of its opposition to the international rule admitting women to membership.<sup>47</sup> The society reaffiliated in April, 1878, only to secede again in January, 1879, because it objected to contributing money for the support of certain strikes sanctioned by the international association.<sup>48</sup> For some years there was in Chicago an independent local union known as the United Order of American Bricklayers. In August, 1884, it joined the international union of the trade. In 1886 it withdrew because of the decision of the general session regarding the payment of its accumulated dues and assessments.<sup>49</sup>

In all trades there have existed local societies which have maintained their independence of the federal association for a longer or shorter period. Independent local unions seem to have flourished particularly in San Francisco, perhaps because the industrial isolation of the cities on the Pacific Coast has made cooperation with societies of the trade in other parts of the country less imperative. The San Francisco local union of iron molders severed its connection with the federal association of the trade in 1872, and maintained its independence for some years.<sup>50</sup> Until 1886 the society

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<sup>46</sup> Report of the President, in MS. Proceedings of the Fifth Annual Convention, 1870.

<sup>47</sup> Cigar Makers' Official Journal, March 10, June 10, 1878.

<sup>48</sup> Ibid., May, 1880.

<sup>49</sup> Report of the Secretary, in Proceedings, 1886, p. 38.

<sup>50</sup> Report of the President, in Proceedings, 1872.

of cigar makers in San Francisco refused to join the international union. The brewery workmen of San Francisco broke away from the United Brewery Workmen of America in 1889, and remained independent for several years,<sup>51</sup> and other instances might be noted. Independent local unions have been and are still particularly numerous among the boot and shoe workers. Undoubtedly, the lack for many years of any one central union of boot and shoe workers has tended to promote sectionalism. In some of the old centers of the industry local societies have maintained an independent existence for generations, and are reluctant to merge themselves into any federation. Many of the boot and shoe workers were organized into local assemblies of the Knights of Labor,<sup>52</sup> and these local assemblies since the decline of the Knights have held aloof from the Boot and Shoe Workers' Union.

The different sections of the country are, however, being continually knit together in closer economic ties. Employers separated by wide stretches of territory are competing keenly, and a slight change in the rate of wages paid by one affects the amount of business done by the others. The independent local union in industries with a national market is becoming more and more impotent to regulate the conditions of employment, and is rapidly disappearing.

Such independent societies still flourish in industries which, like building construction, satisfy local needs. In these industries the workers in one community are not hampered in their efforts to improve the conditions of employment by conditions existing in other places. They must protect their wage scale, however, from underbidding by workmen who come from other places. In the building trades this is accomplished to some extent by means of the "exclusive agreement," under which the contractors agree to employ only union men, provided that the trade unionists

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<sup>51</sup> Brauer-Zeitung, January 28, 1893.

<sup>52</sup> Discussions of the independent local unions of boot and shoe workers can be found in nearly every number of the union journal from 1900 to 1904.

agree on their part to work only for employers who are parties to the compact. The local union, thus protected from incoming journeymen, can bid defiance to the federal association.

Independent local unions have been very numerous in the building trades, particularly in the large cities, where the societies, usually with a large membership, are able to maintain fairly adequate funds for the payment of strike and other benefits. A notable example has been the Chicago local union of bricklayers, which has a membership of five thousand. Though Chicago is said to be "the dumping ground for all bricklayers going west," the Chicago local union has been amply protected by its exclusive agreement.<sup>53</sup> The painters, decorators, and paper hangers of New York have also maintained an independent society for many years. Officials of such independent local unions have declared to the writer that they have nothing to gain and even something to lose by federating with the international union of the trade. If, for example, they joined the federation, members of sister societies would have to be admitted without payment of an initiation fee, and so the revenue received from this source would be lost. The younger members who wish to travel desire an alliance with the international union, since such an alliance would help them to find employment in other places, but these would-be wanderers are a small minority.

As has been already pointed out, however, even in the building industry contractors in different cities are beginning to compete, and cooperation between local societies for purposes of collective bargaining is becoming more and more necessary. In addition, the exclusive agreement has fallen into disfavor because it has been used to build up the power of employers' associations, and this power has been used against the union. Certainly this device could serve only temporarily to retard the disappearance of the independent local union in these trades.

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<sup>53</sup> Proceedings of the Twenty-ninth Annual Convention of the Bricklayers' and Masons' International Union, 1895, pp. 13-16, 46-52.



The American Federation of Labor has been used as a means to force independent societies to join the international unions. The Federation withholds its cooperation from the independent societies; and the failure to obtain this cooperation is a serious handicap, particularly to those trades which make important use of the boycott or the union label, since without its aid a boycott cannot be effectively maintained nor patronage secured for goods bearing the union label. Independent societies of boot and shoe workers have been forced to join the Boot and Shoe Workers' Union because the manufacturers found that they could not increase their sales by attaching the label of such societies.<sup>54</sup> The American Federation of Labor has a rule that a local society suspended from or refusing to join the international union of the trade cannot affiliate with the central labor union or federation of trades in its community. Sometimes central labor unions sympathize with the local societies and are reluctant to enforce this rule, but on various occasions they have been compelled to do so under threat of expulsion by the officials of the Federation.<sup>55</sup>

The most potent factor in strengthening the allegiance of the local unions to the international union and in promoting obedience to the rules has been the growth in the activities of these central organizations. Often an increase in dues was opposed in the early international unions because it was argued that if the local unions refused to pay low dues, they certainly would not pay high ones. Experience has shown, however, exactly the contrary to be true. The support of various activities from a central rather than a local treasury gives an added value to membership in the federation. Thus the guarantee of adequate support of members on strike has

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<sup>54</sup> See, for example, *Shoe Workers' Journal*, February and March, 1903, pp. 26-28; Report of President, in *Proceedings*, 1904.

<sup>55</sup> The Federated Trades Council of the Pacific Coast was suspended by the American Federation of Labor for failure to expel the independent San Francisco society of brewery workmen, and was reinstated only on the promise to carry out this decision (*Brauer-Zeitung*, December 19, 26, 1891; January 28, 1893). For another instance, see *Brauer-Zeitung*, December 9, 1899; January 13, 1900.



not only increased international control over strikes, but has developed a desire on the part of the local unions to pay their assessments promptly and otherwise obey the rules, in order to be eligible to the benefit in case of need. The members transfer their primary allegiance from the local to the central organization when sick, death, and out-of-work benefits are paid from national funds. For this reason, we find the union leaders who favor a strongly centralized international union advocating strenuously at meetings of convention or in the editorial columns of the trade journal the payment of such benefits by the federal associations.

## PART III

### THE MACHINERY OF GOVERNMENT

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#### CHAPTER VII

#### THE SOURCES OF THE TRADE-UNION CONSTITUTION

American trade unionists, in piecing together their machinery of government, have borrowed from various sources. Information concerning the rise of local societies of workers in the same town or city is so fragmentary that all statements concerning the sources from which they drew their form of government must be merely guesses and therefore unprofitable. Our knowledge of the federation of these local societies into national or international trade unions, which occurred much later, is much more definite, and the influences affecting their governmental development can be traced.

The secret or fraternal societies have exercised an important influence on the government of the national unions. The rules adopted by the first permanent national trade union in the United States, the National Typographical Union, were apparently borrowed by the committee which drew them up in 1851 "almost without change except for unimportant omissions from the Constitution of the Right Worthy Grand Lodge of the Independent Order of Odd Fellows of the United States of America. No mention of this fact was made in the report of the committee, but a comparison of the two constitutions reveals such striking similarities, that the connection between them can be clearly established."<sup>1</sup>

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<sup>1</sup> G. E. Barnett, "Origin of the Constitution of the Typographical Union," in Johns Hopkins University Circular, new ser., 1905, no. 6.

The constitution of the Grand Lodge of Odd Fellows was well suited for the kind of organization which the founders of the International Typographical Union sought to create. The proposed activities of the association were few in number, the primary one being control over journeymen who moved from one place to another. This movement had until then been partly controlled by correspondence between the local societies. There was needed a very decentralized form of government, clothed chiefly with legislative powers. Of such a decentralized form was the government of the Grand Lodge of Odd Fellows, in which the principal organ of government was the representative council of delegates from the local societies. During the brief period of a few days that this convention was in session it exercised legislative, judicial, and executive functions. The officers were primarily such as were necessary for the conduct of this assembly, and between its meetings they had few if any duties to perform.

The early constitutions of two national unions formed soon after that of the Printers, the United Operative Mule Spinners of New England<sup>2</sup> and the Grand Forge of the Sons of Vulcan,<sup>3</sup> show no trace of the influence of the Odd Fellows either in wording or subject matter. On the other hand, the Iron Molders, who early established a powerful organization, copied the constitution of the Printers very closely at their first national convention in 1859. Whole sections are identical. Here and there a word has been changed or a sentence left out. Sometimes a section has been much shortened by the omission of several sentences, as in the following article:—

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<sup>2</sup> Constitution and General By-Laws of the United Operative Mule Spinners of New England, Benevolent and Protective Association. Fall River, 1858.

<sup>3</sup> The earliest available constitution of the National Forge of the United Sons of Vulcan, established in 1860, is that contained in the Proceedings, 1869, in Vulcan Record, vol. i, no. 4.

CONSTITUTION OF NATIONAL  
TYPOGRAPHICAL UNION  
Adopted 1851

*Article I*

*Section 1.*

This body shall be known by the name of the "National Typographical Union" and shall be acknowledged, respected and obeyed as such by each subordinate union in the country. *It shall possess original and exclusive jurisdiction in all matters pertaining to the fellowship of the craft in the United States.* All subordinate unions shall assemble under its warrant and derive their authority from it enabling them to make all necessary local laws for their own government.

*It shall be the ultimate tribunal to which all matters of general importance to the welfare of the members of the different unions shall be referred and its decision thereon shall be final and conclusive. To it shall belong the power to regulate, fix and determine the customs and usages in regard to all matters appertaining to the craft.* It shall possess inherent powers to establish subordinate unions who shall always act by virtue of a warrant granted by authority of this body.

CONSTITUTION OF NATIONAL  
UNION OF IRON MOLDERS  
Adopted 1859<sup>4</sup>

*Article I*

*Section 1.*

The National Union of Iron Molders shall possess original jurisdiction in all matters pertaining to the welfare of the craft in the United States. It shall be the tribunal to which all matters of general importance to the welfare of the members of the different unions shall be referred, and its decision thereon shall be final and conclusive. To it shall belong the power to determine the customs and usages in regard to all matters appertaining to the craft.

Sometimes a whole section has been left out, sometimes a new one inserted. The constitution of the Printers is composed of ten articles, that of the Iron Molders of seven; but the two documents are in most respects identical. There was one significant difference. The Iron Molders, unlike the Printers, made provision for the exercise of executive and judicial powers by a national executive committee during the period between conventions. This committee was, however, too large to perform any real function. It was,

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<sup>4</sup> Contained in Synopsis of the Proceedings of the National Convention of Iron Molders, Philadelphia, July 5-7, 1859.

in fact, the annual convention reduced in size, since each local union was required to appoint one of its representatives to the annual convention as a member of the committee.

The Printers retained the constitution which they borrowed from the Odd Fellows practically unchanged until 1885; and its main outlines are still perceptible in the present constitution of their international union. Within four years the Iron Molders had entirely revised their constitution. The rules adopted by the convention of 1863<sup>5</sup> differ widely from those of 1859 in arrangement, wording, and subject matter. The representative convention was retained with undiminished powers; the chief change was the provision of more adequate machinery to carry out executive and judicial functions between the meetings of the convention. With the rapid growth of the activities of the national union, more and more detailed machinery has been created, not only for executive and judicial matters, but also for the legislative work of adopting amendments to the organic law. The Bricklayers and the Cigar Makers, which formed national unions about the close of the Civil War, felt the influence of the Odd Fellows very slightly, since they appropriated the constitution of the Iron Molders as revised in 1863.

The discarding of the Printers' constitution by the Iron Molders is probably to be explained by fundamental differences in the character of the two trades. In iron molding the product finds a national market; in the newspaper part of the printing industry and in much of the jobbing business as well the custom is local. In the case of the Printers, bargaining with employers has been conducted locally; with the Iron Molders, when effective, it has been national. The constitution which was suitable to a highly decentralized organization like that of the Printers was unsuitable to a centralized one like that of the Iron Molders. Similarly, the Bricklayers, engaged in an industry which satisfies local needs, retained the constitution borrowed from the Iron Molders with few changes until very recently. The Cigar

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<sup>5</sup> Contained in Proceedings, 1863.

Makers, who manufacture a commodity which often has a wide territorial market, soon discarded the borrowed constitution, and have not only kept pace with, but to some extent have outdistanced the Iron Molders in establishing a strongly centralized system of national administration and in the elaboration of methods of transacting business between the meetings of convention.

The fraternal orders have also helped in less distinguishable ways to mold the government of American trade unions. In the proceedings of trade unions reference is occasionally made to the system of benefits maintained by fraternal organizations, and the members are urged to copy the best features of these associations. The mystery which surrounds the secret society, the elaborate ceremonies, and the gorgeous regalia have proved very attractive to the American workmen; and these forms and this secrecy they have frequently introduced into their labor unions. The influence of the secret orders is seen also in the use of names, such as "grand lodge," "subordinate lodge," "grand master," "chaplain," "guide," "warden," "inner guard," "outer guard," and "marshal."

During the decade or more following the Civil War secret associations among workmen became the fashion. The best known of these was the once powerful Knights of Labor. There were many others: the Supreme Mechanical Sun, an organization with an extensive ritual and numerous degrees; the Grand Eight-Hour League, and others whose names were never given to the public. Not only in such general associations of workingmen, but also in organizations of particular trades did this desire for secrecy prevail. Among the bricklayers certain local unions in New York and New Jersey withdrew from the national association in 1873 to form the United Order of American Bricklayers, and one reason given for this secession was the desire to form a secret society. Some of the railway unions formed during this period have continued to this day to surround their proceedings with the veil of mystery.

The local unions in particular have borrowed the trap-

pings of the secret societies. Through a peephole in the door the pass word is in some unions solemnly demanded of the member who wishes to enter. Within, the numerous officers are perhaps seated after the manner of secret societies at their stations on different sides of the room. Extensive rituals and gorgeous regalia are often used. Of course the policy of the societies varies widely from the simplest democracy to the most complicated formalities; but secrecy, regalia, and elaborate ritual are certainly not uncommon.

To conclude, the influence of one of the large fraternal orders is to be seen in the constitution of two of the earliest and most powerful trade unions in the United States, and this influence they have transmitted to many unions that have imitated them. The form of government borrowed from the Odd Fellows, in which the representative council or convention was practically the sole organ, broke down, however, with the growth in the powers of the national union. On this simple frame-work, therefore, was superimposed more elaborate machinery to carry out the several functions of government during the period when convention was not in session. The influence of the fraternal orders is also to be seen in the use of names and of elaborate ritual, and in the desire for secrecy in many organizations.

The American unions have profited greatly from the experience of the European organizations, particularly the English unions. Some American organizations were founded by workmen who learned their first lessons in trade unionism in the Old World. The Cotton Mule Spinners' Union of New England was formed by operatives who had emigrated to the mill towns of New England from Lancashire, England,—a very radical trade-union district. The principles of unionism had been bred in these men through several generations, since their forefathers, the old hand mule spinners of Lancashire, had been early pioneers in the formation of trade unions.<sup>6</sup> The American Miners' Association was organized among the miners of Illinois and Missouri

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<sup>6</sup> Boston Herald, October 21, 1875.

about 1861 by an old English miner and a Welsh miner. Many other instances can be cited.

The American associations undoubtedly devoted considerable study to the government and policies of the unions in Europe. In 1864 the president of the Iron Molders' Union suggested that an agent of the association be sent abroad to study the workings of the trade unions and cooperative societies of Great Britain.<sup>7</sup> There is no evidence that this suggestion was adopted, but comparative studies of the features of American and English trade unions and excerpts from the reports of the English society of iron molders and notes of its activities appeared from time to time in the official journal of the organization.

The soft stone cutters, who, after the printers, were among the first to form a national union in the United States, are said to have borrowed their constitution from the soft stone cutters' union of England. The method so common among English unions of adopting amendments to the rules by the initiative and referendum was used by this early association of stone cutters. That is, any amendment initiated or proposed by one local union and seconded by a sufficient number of others was referred to the members of the subordinate unions for adoption or rejection. The governing branch, another governmental feature of many English unions, was used by the American stone cutters. Under this system a certain town is chosen by the representative convention or by vote of all the members as headquarters of the federal organization. The union or unions in the place so chosen are allowed to elect all or most of the executive officers of the national association.<sup>8</sup> The early organization of soft stone cutters apparently went to pieces, and the constitution of the present Journeymen Stone Cutters' Association of North America shows no trace of the English influence.

The Granite Cutters copied the constitution of the early

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<sup>7</sup> Report of the President, in Proceedings, 1864.

<sup>8</sup> Circular of the Journeymen Stone Cutters' Association of the United States and Canada for April and May, 1858.



organization of soft stone cutters at their first national convention in 1877,<sup>9</sup> and their form of government is still very similar to that of the English unions. They have held no representative convention since 1880, but adopt all amendments to the constitution by vote of the members. Every five years the headquarters of the organization is chosen by popular vote, and the local unions at headquarters select all the officers and members of the executive board except the secretary-treasurer.

The members of the Cigar Makers' International Union of America, a very efficient organization which has been widely imitated, have been close students of the English unions. Correspondence between the officials of the English and the American societies of cigar makers was begun in 1871, broken off, and resumed in 1876. Letters from the secretary of the Cigar Makers' Mutual Association of England appeared in the trade journal of the American union about 1876.<sup>10</sup> In them the writer made many practical suggestions based on the experiences of his own organization. He suggested, for example, the strict enforcement of the principle of the closed shop, and urged the American union not to fight against the introduction of machinery and not to discriminate against women workers. He sent a copy of the rules of the English society to the officials of the American union. Naturally, therefore, when about 1877 and 1878 the American Union of Cigar Makers entered on a period of growth and reorganization, it turned for guidance to the experience of the English unions.

Those directing the affairs of the Cigar Makers were anxious to build up a strongly centralized organization, and the English unions were of such a character. On a government still reflecting somewhat the influence of the Odd Fellows from its imitation of the Iron Molders' constitution were therefore superimposed various carefully selected features of the more progressive English unions.<sup>11</sup> The local

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<sup>9</sup> Granite Cutters' Journal, April, 1877, p. 1.

<sup>10</sup> For example, see Cigar Makers' Official Journal, March, April, December, 1876.

<sup>11</sup> Thus see Cigar Makers' Official Journal, August, 1879.

unions have been bound in closer allegiance to the federal association by paying, as do the Amalgamated Society of Engineers, the Amalgamated Society of Carpenters, and other English unions, sick, death, out-of-work, and strike benefits from national funds. The chief features in the financial system of the English union—the accumulation of revenue by periodical collection of dues rather than by special assessments, the distribution of national funds among the treasuries of the local societies rather than its accumulation in a single central treasury, and national control over the income and expenditure of the local union—have all been copied. The Cigar Makers, like the Granite Cutters, have practically ceased to hold conventions, and refer all important questions to a vote of the members.

The features of the English societies have, however, been only in a limited way engrafted on the structure of the American unions. A number of associations make no use of the referendum, and very few have entirely ceased to hold conventions. The majority have retained the representative assembly, but during the interval between its sessions refer certain limited kinds of questions to popular vote. Because the members of the union in each section of the country demand representation on the board of management, the system of the governing branch has been distinctly unpopular in American organizations. It has been adopted by very few trades, not even by a trade like that of the cigar makers, which has felt so strongly the influence of the English societies. The American unions are much more decentralized. The conditions of employment are usually regulated by the local societies, which jealously oppose any increase in the functions of the federal organizations. The English associations have the advantage of compactness, their membership being included within a territory not larger than one of the average American States. Cost of living, methods of production, transportation facilities, and other conditions vary slightly, and uniformity can be obtained with comparative ease. On the other hand, the

American unions have extended their jurisdiction over an economically diversified territory including not merely the United States, but also Canada and Mexico, and within the last few years even the West Indies and the far distant Hawaiian and Philippine Islands.

The possible influence of the American political system is too intangible to measure. It is perhaps to be seen in the respect often shown for the representative form of government, and in the attempts to make the national union a federation of state associations,<sup>12</sup> in spite of the fact that the natural territorial divisions of the union, as determined by competitive conditions, seldom correspond with the States. Trade unionists also make at times stilted comparisons between the American judicial system and their own methods of appeal from a lower to a higher authority. Specific imitation of the American political system is, however, very difficult to discover.

Because the American unions have borrowed so freely from one another, the influences felt by only a few have been extended quickly to the others. The Granite Cutters and the Cigar Makers have made the methods of the English unions familiar to American workmen who have had no direct knowledge of these foreign societies. Through the Printers and the Cigar Makers the influence of the Odd Fellows has been communicated to other trades. Certain notably strong and efficient unions have been especial favorites of the imitators. The Operative Potters at their first national convention borrowed very largely from the constitution, by-laws, and ritual of the American Flint Glass Workers because, it was said, they wished to "pattern after one of the most successful labor organizations of the day." The government and policies of the Cigar Makers have been widely imitated. The Piano and Organ Workers have, with a few minor changes, practically adopted their entire constitution. The rules for the holding of popular elections

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<sup>12</sup> See, for example, Barnett, *The Printers*, p. 27.

observed in the Metal Polishers' International Union are practically identical with those of the Cigar Makers, save for the elimination of several unimportant sections. Even the long established and powerful Iron Molders' Union has borrowed particular features of the Cigar Makers' elaborate system of financial administration.

Frequently there is great similarity between the constitutions of workers in kindred trades or industries, the younger unions borrowing from the older ones. The Tobacco Workers have imitated very closely the constitution of the Cigar Makers, and the constitutions of the various unions of railway employees are markedly similar. The Quarry Workers and the Paving Cutters have copied very closely the structure of the Granite Cutters, and the Hod Carriers that of the Bricklayers. The form of government in American trade unions is not, however, of a uniform pattern. On the contrary, as we shall see throughout this study, the widest variety exists. The American trade unionists are also not mere imitators of others. Often the machinery of government is a patchwork of pieces selected from various sources, but these pieces have been reshaped, and put together into new combinations to suit needs. Each association has also originated certain devices of its own.

Of course, the governmental efficiency of a union is largely determined by the intelligence and selfcontrol of its members. Even if two unions have almost identical rules, the administration of these rules may be vastly different. In one trade, where perhaps brute strength rather than skill is required, the machinery of government may run very badly. The members give little obedience to the national officers; the officers in turn exercise the widest discretion in interpreting the rules, and even break them in emergency. The members are whimsical in punishing for violations of the rules, now expelling and hounding a supposed traitor to the cause of unionism, now dealing leniently with a man chronically careless in his observance of his financial and other obligations. In the meetings a few fire-eaters are

sometimes allowed to override the counsels of the thoughtful. Wire-pulling and boss control at times prevail. In another association the same machinery of government may run smoothly. The officers are honest and efficient; there is a wholesome respect for the rules; and decisions are reached after careful and deliberate judgment. Strikes in one trade are conducted in a quiet, business-like way,—so quiet and “tame,” in fact, that they are uninteresting, and hence receive scant notice in out-of-the-way corners of the daily newspapers. Strikes in the other trade are marked by spectacular rowdyism and mismanagement, and, being excellent “story,” figure in the public press as examples of the failure of trade unionism.

Another factor in trade-union development, potent, yet difficult to measure, is that of leadership. One wonders how far efficient leadership is responsible for the strong business-like organization which the Cigar Makers, a body of comparatively unskilled workers, have been able to build up despite the introduction of machinery and the formation of the tobacco trust. Certainly, at the most crucial and formative period of its history, the influence of two leaders is apparent. One, the president of the union, with the methods of the student, for fourteen years sought in many quarters at home and abroad the means to strengthen his organization. At the conventions of the union and in the pages of its official journal he put forth again and again the arguments in favor of the policies which he advocated, and at last succeeded in convincing even the most conservative. At all meetings of convention there was also to be found the present head of the American Federation of Labor, formerly a cigar maker, ever progressive and likewise ever aggressive and belligerent. The Iron Molders still revere the memory of William H. Silvis, one of their first presidents, who was so influential in determining the form of the organization during its early and plastic stage. The Miners have been fortunate in their leaders, from Daniel Weaver and John Siney, whose names are associated with the early ephemeral

national unions of the trade, to John Mitchell, during whose administration the loosely knit federation of district associations known as the United Mine Workers has been able to exercise really important functions. In most trades there can be found leaders who have left some mark of their influence on the structure and activities of their associations.

## CHAPTER VIII

### THE GOVERNMENT OF THE MINOR BODIES

The machinery of government of the shop meeting has always been simple and informal. Usually some one has been elected to preside at meetings held within the industrial establishment, and when the need has arisen, special committees have been created to lay the demands of the journeymen before the employer. At a very early date the journeymen in the printing shops of England and America were organized into "chapels." The chapel held meetings whenever a disagreement arose with the employer or between the journeymen themselves, and it was presided over by the so-called "father of the chapel."

Meetings held within the factory itself are so very inconvenient that they are rapidly disappearing, and all functions are being delegated to some official or to a small committee. The constitution of the New York Typographical Society for 1833 provided that "if the majority in large offices decide to delegate their power to chapels, consisting of five, seven or nine members, of which the father to be always one, it shall be competent for them to do so." Sometimes, because of objections from employers, shop meetings have been absolutely forbidden. For example, the hat manufacturers of Danbury, Connecticut, objected to the interruptions to work caused by the frequent "shop calls" of their employees. They declared that while such meetings were being held, the fires went out and the felt in process of preparation was ruined. In 1885 the manufacturers obtained from the local union an agreement by which "shop calls" were prohibited. Usually the workmen in each establishment elect a small committee known as the shop or mill committee. To this committee any member or members may bring a grievance. The committee, if it deems neces-

sary, endeavors to adjust the matter with the employer, and failing to do so, submits the difficulty to the local union. In each establishment there is also a shop official known among the Printers as the father of the chapel, among the Cigar Makers as the shop collector, and in many trades as the shop steward. Sometimes he is elected by the local union, sometimes by his fellow-workmen in the same factory. The shop steward collects the dues of members. In closed or union shops he keeps watch that only those in good standing with the society are permitted to work. He reports to the local union the number of unfilled positions in the factory. He detects and reports any deviation from the standard scale of wages, hours, and other working conditions established by the society. When his organization affixes a label to union-made goods, he often has charge of distributing and attaching these labels at the factory.

The government of the local union is essentially government by mass-meeting. The whole body of members, assembling once each month, once each fortnight, or oftener, is the final authority for the transaction of all business,—legislative, executive, and judicial. The general meeting may adopt amendments to the by-laws, may suspend or expel a member, may order the purchase of an account book, or may declare a strike.

Usually the meetings of the local union are held in some convenient hall. Sometimes several local unions join together to hire or purchase a building where each may have its office and meeting room. Often the cheapest and most convenient place is a room over a store or perhaps over a saloon. The character of these meeting halls varies widely. Some are forlornly barren, uncarpeted, containing only a decrepit table and formidable rows of long dilapidated benches. Others are cozy and attractive. In one such room visited, for example, the floor was covered with rugs, and the chairs were not arranged in formal rows, but were disposed irregularly along the sides of the room. During the meetings the several officers were stationed in various parts



of the room with something of the ceremony of fraternal orders. They sat upon raised platforms, before small round column-like tables painted in black and cream and gold. Cases filled with gay regalia and shelves lined with books and periodicals added to the attractiveness of the room.

In the trade union the faults of government by mass-meeting are the ones common to all such assemblies. One difficulty is to secure regular attendance of members. Often in small societies a quorum can be secured with difficulty. Some local unions levy fines for inexcusable absences, or even deprive a member of the card which enables him to work at his trade with other unionists. Usually such measures are effective, though a few instances have been found where the fines are so frequent that they have become a regular source of revenue, and in consequence the weekly dues have been reduced in amount. Occasionally, difficulties result from revolts of the minority, who, disgruntled perhaps because a pet scheme has been rejected, revenge themselves by bitter denunciation, by filibustering, or by constantly stirring up factional feeling which may ultimately disrupt the union. The thoughtful and conservative allow themselves to be overawed into declaring unwise strikes by the taunt of cowardice from the "red-hot fire-eaters." Windy orators waste the time of the meetings in rambling, pointless discussion.

The mass-meeting is a clumsy mechanism to use for rendering judicial decisions and for the transaction of executive business, and matters are continually arising which demand immediate consideration during the period between the regular meetings. The general meeting has been very reluctant to delegate any of its powers; but of necessity various boards and committees have gradually been created. Many of these committees are appointed for a particular purpose, and are discharged when that purpose has been attained. Nevertheless, certain standing committees have also emerged, the most important of which is the executive committee. This board exercises a wide though varying number of specially delegated powers, but any of its deci-

sions may be overruled by the general meeting.<sup>1</sup> The executive board appears at a comparatively late date in the history of the local union. Such a board existed in the Philadelphia Typographical Society in 1802 and in the New York society of the same trade as early as 1809; it was not used, however, by the Washington association of printers in 1821,<sup>2</sup> or by the Baltimore society in 1833.<sup>3</sup> Since about 1840 it has become a useful feature of government in local unions of printers; in other trades it did not appear until a much later date. The local unions of such early organized trades as hat making, stone cutting, and bricklaying, for example, had no executive boards as late as the decade between 1880 and 1890. Some international unions have adopted rules requiring the subordinate branches to create such executive committees in order to prevent delay in the transaction of international business during the frequently long interval between the meetings of the local union.<sup>4</sup> At the present day most local societies have such executive boards, though not even yet are they to be found in some trades.

Another important committee of the local union is the judiciary or grievance committee, which considers charges. Sometimes a special committee is created when a member is brought to trial. Occasionally the executive board is vested with this judicial authority, but more frequently a special standing committee exists for this purpose. Another standing committee is the membership committee; another is

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<sup>1</sup> In the earliest extant constitution of an American local trade union, that of the Philadelphia Typographical Society for 1802, power to transact all business not especially delegated to the general meeting was vested in a board of directors, which admitted and expelled members, paid benefits, and adopted regulations of work. Its decisions were reported to the general meeting, but could not be reversed by that body. The structure of the Philadelphia Typographical Society was exceptional. The constitution of this association is reprinted in the Bulletin of the Bureau of Labor, no. 61, November, 1905.

<sup>2</sup> Constitution of the Columbia Typographical Society of Washington, 1821.

<sup>3</sup> Constitution of the New York Typographical Society, 1833.

<sup>4</sup> The Cigar Makers made provision for the establishment of such boards as early as 1879 (Constitution, adopted 1879, art. xvi, sec. 1, in Cigar Makers' Official Journal, September, 1879, p. 3).

the finance committee, one of whose most important duties is to audit the accounts of the officers having charge of the funds.

The officers of the local union are commonly a president, who is chairman at meetings of the society, a vice-president, a recording secretary, a treasurer, a corresponding secretary, and frequently also a financial secretary who keeps account of receipts and expenditures. Sometimes the recording secretary acts as corresponding or as financial secretary; sometimes the officers of corresponding secretary and financial secretary are combined. Usually the local officers are unpaid, or are paid a nominal sum. They work at their trade, and perform their official duties during spare time. The duties of the local and financial secretary are exceptionally onerous in unions which, like the Cigar Makers, maintain a variety of benefits, and many of the larger local unions in such trades pay him a salary. The paid financial secretary devotes his entire time to the union, and receives usually the rate of wages prevailing in the trade. Not only does he keep the financial accounts, but he also performs in many instances the work of corresponding secretary, recording secretary, and treasurer.

The other paid official in the local union is the walking delegate or, as the trade unionists prefer to call him, the business agent. The business agent adjusts disputes between employers and their workmen, and thus replaces the committees of the shops and local union which would otherwise perform this service. The policy of bargaining with employers through unpaid officials or committees has certain disadvantages. In the first place, the employers frequently look upon the members of delegations from their workmen as agitators seeking to stir up trouble, and sometimes discharge them at the earliest opportunity. Moreover, efficient bargaining with an employer requires shrewdness, diplomacy, and considerable knowledge of cost and methods of production in competing factories. Gradually the salaried official attains knowledge concerning conditions in the industry and also some skill in bargaining. At the same time he is not

restrained in upholding the rights of his fellow-workmen by the fear of being discharged by the employer.

The business agent performs also duties which in other unions are left to the shop steward. Like that official, he collects dues, detects and calls attention to violations of trade agreements, and prevents the employment of non-society journeymen in union shops. Another of his functions is to serve as the head of an employment agency. Employers who need additional journeymen apply to him in the early morning hours before he starts on his round of visits from one establishment to another, and he dispatches such men as are out of work to fill the vacant places. As an organizer he seeks to persuade workmen to join the union. Frequently he acts as financial secretary. Sometimes when the union pays sick benefits he visits sick members to determine their eligibility to receive such benefits.<sup>5</sup>

The business agent is a very recent development in the government of the local trade union. The first walking delegate is reported to have been James Lynch, who was elected to the office by the carpenters' union of New York in 1883;<sup>6</sup> but walking delegates were also maintained by the Bricklayers of New York in 1883 and perhaps earlier.<sup>7</sup> Probably a large majority of the local unions do not employ business agents. Of twelve hundred and twenty-five local unions in Massachusetts from whom information was obtained in a recent investigation not more than thirty-eight per cent were represented by business agents.<sup>8</sup> Only local unions with a large membership can afford the expense of maintaining a business agent. Local unions of the building trades constitute perhaps more than half of the societies maintaining business agents; certainly such was found by the above inquiry to be the condition in Massachusetts. The business agent is declared to be more needed in the building trades

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<sup>5</sup> A good description of the work of the walking delegate is contained in *The Tailor*, April, 1893, p. 6.

<sup>6</sup> *Century Magazine*, December, 1903, p. 298.

<sup>7</sup> *Proceedings*, 1883.

<sup>8</sup> *Thirty-ninth Annual Report of the Statistics of Labor for 1908 of the Bureau of Statistics of the Commonwealth of Massachusetts.*

than in others because the incessant shifting of the workers from one building to another renders the maintenance of any kind of shop organization difficult. Members of the building trades unions are required by their organizations to elect a shop steward as soon as they are put to work on the construction of a building, but often such a group of workers are too little acquainted with one another to know who is the best man for the position. In addition to this, the steward who is selected has scarcely time enough to familiarize himself with his duties or to develop a sense of responsibility for performing them.

Hated by employers, envied and often criticised by his fellow-unionists, the position of the business agent is not always a pleasant one. Such is the common complaint of the business agents with whom the writer has talked. "I found the position anything but pleasant," said James Lynch, the early walking delegate mentioned above. "I was at once plunged into continual war. My presence on a job was an irritation to the employer as well as to the non-union men and not infrequently some of the union men envied me, little knowing the sorrows of my lot." Usually the business agent receives the same salary as he would if he were working at his trade. His expenses are increased, however, because of his office. At the same time he is vested with great authority and is subjected to dangerous temptation. From accepting bribes to levying blackmail was the short step which put prominent business agents of the New York building trades unions in Sing Sing Prison a few years ago. The union is frequently not blameless. The statement has been made repeatedly, though with what truth it is difficult to say, that certain unions have condoned the blackmailing of employers by shrewd and energetic agents who have been successful in securing good wages for the trade.

One serious mistake has been to vest the business agent with power to call a strike, for this power has been the club which he has used to extort money from the employers. The policy of permitting the business agent to declare a strike has prevailed particularly in the building trades. In those trades

he may order the workmen to leave the building immediately whenever he finds a non-union man at work or discovers some other violation of the agreement by the employer. As a consequence, the most flagrant cases of dishonesty among business agents have occurred in the building trades. These trades vest control over strikes in such officials for the same reason that they permit the men on a building to strike without the consent of the local union, namely, because the frequent shifting of the men from one building to another necessitates prompt action.

In all the trades except the building trades the immediate control of the business agent over strikes and other matters is very much restricted. Very seldom has he power to call a strike. To be sure, a suggestion from him may lead the men in an industrial establishment to quit work; but, as has been pointed out, unauthorized shop strikes are rapidly disappearing. Over the vote on strikes at meetings of the local unions he can exert only a limited influence. Almost invariably the vote is a secret one, in order that the fear of denunciation by others may not cause the timid to vote against their convictions. Moreover, the local union is referring proposed strikes to the international union with increasing frequency, and the international union does not even accept the report of the business agent, but sends its own representative to investigate the cause of the dispute. Because of his official position and because of his intimate knowledge of conditions about which the other members are only vaguely informed, the business agent, in spite of all restrictions on his power, naturally exercises great influence at meetings of the local unions. Indeed, some of the more able among them are said to hold their unions in the hollow of their hands. But the domination of leaders is seemingly inevitable in trade unions as in other organizations. As far as rules can provide, the powers of the business agent are carefully restricted by requiring him to submit all questions to the local executive board or to meetings of the local union.

Even in the building trades the influence of the business agent over strikes is declining. To be sure, after the spec-

tacular trials of 1904 and 1905 the New York local unions, even those whose business agents had been sent to prison for blackmailing, continued to permit such officials to call men off a building. Nevertheless, the Building Trades Alliance adopted at that time a rule to the effect that no business agent could declare a strike involving other trades besides his own. Power to declare strikes involving several of the building trades was not vested as formerly in the joint board of walking delegates, but in a board or council especially created for the purpose on which each of the unions belonging to the alliance was represented. At the same time, by an agreement between the Building Trades Employers' Association and their workmen, no strike can be declared by joint action of all local unions, by a single local union, by a business agent, or by a group of men on a building until the matter in dispute has been referred to an arbitration board consisting of two delegates from each division of the Employers' Association and two from each local union that is a party to the agreement. A business agent, therefore, could order to quit work only members of his own trade employed by an independent contractor not a party to the above agreement.

Grave defects in the government of the local union have resulted from the administrative inexperience of its members. Students of trade-union development must not forget that the early unionist was ordinarily without parliamentary or executive experience. Unless he had dabbled in ward or county politics, or had served as delegate to some party convention, he had little practical or even theoretical knowledge of the machinery of government. If one half of the reminiscences to be heard or read are true, conditions in the newly organized local union were disheartening.

Such executive inexperience has been clearly apparent, for example, in the methods of financial administration. Treasurers and financial secretaries frequently defalcated. In the early trade journals there appeared such notices as the following: "Be it known that \_\_\_\_\_, late financial secretary of Union No. — has absconded and taken



\$9 and over of assessments and dues belonging to the union. Other unions look out for him, for he is a 'beat' and a very smooth talker."<sup>9</sup> Often the funds so misappropriated were small in amount, frequently not exceeding thirty or forty dollars. One cause of such delinquency has been the lack of care or discrimination exercised in the selection of men to fill financial positions. Incompetents, "good fellows," and total strangers of whose past nothing was known have been elected. For example, on one occasion a local union chose as financial secretary a man who had been in town only a few weeks prior to his election. His record was by no means clear, the union of the locality he had just left having suspended him for non-payment of dues, but on application to the local union in his new place of residence he was reinstated on his promise to pay the arrearage. When the office of financial secretary fell vacant, he was elected to the position. A few weeks later he absconded with about forty dollars of the society's funds.<sup>10</sup>

Another important cause of defalcation has been the neglect of the local union to take proper precautions for the protection of the funds. Frequently the financial officers have not been required to give bond. The financial secretary has been allowed to accumulate dues in his own hands without turning them over to the treasurer. Many societies have failed to elect trustees, or such trustees, when elected, have neglected to require that the financial officers turn over all funds above a certain amount for deposit or investment. Some local unions have even failed to elect auditing committees to examine the books and accounts of the treasurer and financial secretary and to report as to their correctness. The financial officers have been permitted to report to the general meeting, where garbled and false statements could be made without fear of detection. On the other hand, since these societies were unincorporated, and since in many cases the officers were paid no salaries, legal prosecution has been difficult. Moreover, with mis-

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<sup>9</sup> Cigar Makers' Official Journal, March, 1876, p. 3.

<sup>10</sup> Ibid., March, 1881, p. 5.



placed sympathy, such societies have frequently not attempted to bring the absconding officers to trial. Sometimes they have even allowed those who have promised to refund the amount embezzled to maintain their membership in the union. Gradually, however, the older local unions have evolved better methods of administering financial and other business. Some international organizations have adopted rigid rules for the guidance of local unions, and a few have created special international officers who travel from one society to another to see that these rules are enforced.

In the district unions the representative assembly performs the functions of the general mass-meeting in the local society. Equal representation on the district council for each society has sometimes been secured by the small local unions, which are watchful to prevent any encroachment upon their independence. The more centralized district unions, which hold the welfare of the majority paramount to the preservation of local authority, ordinarily permit representation in proportion to membership. The district council transacts all important business, though in some trades the members, wishing to retain control over the adoption of amendments to the constitution and of regulations governing the conditions of employment, require that the decision of the council on such matters be submitted to a referendum vote. The officers of the district union are commonly a president, a vice-president, a recording secretary, a financial secretary, a treasurer, and trustees. Sometimes a single official known as the secretary-treasurer performs the duties of the recording secretary, financial secretary, and treasurer. Frequently there is also an executive board, which transacts emergency business between the meetings of the district council. Often the district union maintains a business agent, since many small local societies lack sufficient money to maintain one of their own. Except the business agent, and occasionally the secretary-treasurer, the officers serve without pay or receive only a nominal sum. Quite commonly the business agent is elected by popular

vote of the members of all the local societies, though sometimes the district council selects the business agent from a list of candidates submitted by the local unions. Almost invariably the other officers and the members of the executive board are selected by the district council, and as a rule only the delegates comprising the council are eligible to these positions.

The form of government and the problems of government of the district unions are very similar to those of the national and international associations. In both, for example, there is variety of opinion and practice concerning the use of the initiative and referendum. In both there is the struggle between those who favor equal and those who favor proportional representation. The problems of government of the national union are made more complicated, however, by its wider territorial jurisdiction. Thus, while the district council, which can meet weekly if necessary, transacts nearly all business of the district union, the national trade-union convention, which can be convoked, because of distance, only for a few days each year, transacts but a small part of the national business, matters arising during the long period between its sessions being considered by the officers or the executive board or referred to a general vote of the members. No detailed statement concerning the government of the district union will be made in these pages, since to do so would only be to repeat the discussion of problems which must be considered in the chapters devoted to the government of the national unions.

## CHAPTER IX

### THE NATIONAL CONVENTION

The convention of delegates from the several local societies is perhaps the most important part of the governmental machinery of national and international trade unions. In its general features it does not differ widely from the assemblies or conventions held regularly by church, fraternal, and other organizations. The delegates assemble at the time and place fixed by the preceding convention. They meet in some convenient public hall, are welcomed by municipal executives and local trade-union leaders, continue in session five days or a week, perhaps a little longer, and then adjourn for a year, two years, or more.

The trade-union convention exercises executive and judicial as well as legislative functions, thus violating the political principles of those who hold that each of these three functions of government should be vested in a separate organ of government. In exercising its legislative power it has equal authority to pass every kind of rule. In fact, the trade unions ordinarily make no distinction between constitutional and statutory laws. All kinds of rules are adopted in exactly the same manner. At one moment, therefore, the convention may be remodeling the entire machinery of government, or transferring important functions from the local unions to the international union; at another, it may be passing an unimportant rule to the effect that the union label shall be printed on red instead of blue paper. Exceptions are the International Typographical Union and the Shingle Weavers' Union. In imitation of the American political system, both require that "constitutional" amendments, which have been adopted by convention, must be submitted to popular vote, whereas the so-

called "by-laws" and "general laws" require no such ratification, and go immediately into effect upon enactment by the representative assembly.

Acting as a judicial tribunal, the convention considers grievances brought by national officers, local unions, or members, and these grievances may involve violations of the rules of local unions as well as of those of the national union. In consequence, while some of the suits laid before convention are important, others are trivial. At one time the convention may be suspending a local union for serious violation of the rules; at another time it may be sustaining a subordinate union in imposing a fine of one or two dollars on a member for some petty misdemeanor. An exception must be made of five international unions which do not permit members who have appealed to the international officers or international executive board from a decision of their local union to appeal as a final resort to convention.<sup>1</sup> Save in these few organizations, the time of the convention has been largely wasted by the consideration of unimportant appeals.

The levy of taxes, the appropriation of revenue, the declaration of industrial war, and the ratification of agreements are the functions exercised by the trade-union convention. That assembly fixes the amount of dues and assessments; it controls disbursements; it orders strikes against employers. The convention has the final power in making agreements. Even when collective bargaining is conducted by the local societies, the national union frequently fixes rules of apprenticeship, hours of labor, and other conditions of employment which the subordinate lodges must demand from employers. When the terms of the labor contract are determined by a national or district joint conference between employers and employees, the national or district convention practically always meets immediately before the joint conference and outlines the terms which its representatives are

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<sup>1</sup> These are the following unions: Hotel and Restaurant Employees, Paper Box Makers, Paper Makers and Pulp, Sulphite and Paper Mill Workers, Pavers, and Railway Conductors.

to demand.<sup>3</sup> The convention performs many other functions. It elects officers, and audits their accounts. Through its committees it performs at times a wide variety of detailed administrative duties which in a political government are usually delegated to the executive officers.

The convention of the larger trade unions has the fault of the representative assembly in many political governments and voluntary societies, namely, that it is too large to transact business very efficiently. Sometimes several hundred delegates are present at its sessions. Careful formulation of policies or sifting of evidence in judicial cases by such a large body is impracticable. Therefore the usual practice of creating committees to perform functions has been followed. In consequence, much of the time of conventions is spent in accepting or rejecting the proposals of committees.

The trade-union conventions almost outrival the state and federal legislatures of the United States in the bewildering number and variety of their committees. The committee on constitution, or the committee on laws, as it is variously termed, is perhaps the most important. To it all amendments to the rules are submitted. In some unions this committee reports concerning all amendments submitted to it merely with favorable or unfavorable comment. In other unions it follows the usual legislative practice of pigeon-holing the amendments which it deems undesirable, and presents, perhaps in a reconstructed form, those which it desires the convention to pass. Besides this general legislative committee, special ones are created to consider or draft rules regulating strikes, sick benefits, the union label, or apprenticeship. A judiciary committee, sometimes known as the committee on appeals or grievances, considers appeals from judicial decisions of national officers and local unions. One committee sanctions strikes. Another audits the financial accounts of officers. There are committees to

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<sup>3</sup> For some years the Amalgamated Association of Iron, Steel and Tin Workers held two separate conventions, one to regulate the internal affairs of the organization, the other to draw up the scale of wages to be demanded by employees. Since 1886, however, the two conventions have been merged.

consider conditions of employment, wages, hours of labor, relations with other unions, printing, and the trade journal.

Frequently the duties of these numerous committees are not carefully coordinated. Such lack of coordination is particularly apparent in the legislative work of convention. Amendments to the rules are drafted and submitted to the representative assembly not only by the general committee on constitution, and by committees especially created to frame legislation on some particular matter, but also by committees formed for wholly different purposes. For example, the amendments to the rules recommended by the president or secretary-treasurer in their reports to convention may be drafted in legal form by the committee on officers' reports. Amendments to the rules governing the use and administration of the label may be proposed by the committee appointed to devise means for advertising and promoting the demand for the label. Amendments to the rules relating to the payment of strike benefits may be suggested by the committee which considers petitions to declare strikes. The convention does not ordinarily refer all these proposed amendments to a single coordinating committee. The result is confusion and conflict. On one occasion in the early days of the Iron Molders' Union, two committees submitted to the convention resolutions to the effect that a certain measure should be referred to a vote of the members. One resolution provided that the measure should be adopted if three fourths of the members voted in its favor, and the other if three fourths of the local unions so voted.<sup>8</sup> The convention, failing to observe the conflict, adopted both resolutions. The Iron Molders' Union and some others of the older organizations have remedied this fault by submitting all amendments, by whomsoever proposed, to one committee.

The governmental efficiency of the trade-union convention is limited because it can be convoked so infrequently and can remain in session such a very short time. None of the unions hold conventions oftener than once a year, and many

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<sup>8</sup> Proceedings, 1874.

of them less frequently. The length of each session has been more and more protracted as organizations have grown in the size and number of their activities. For example, the convention of Iron, Steel and Tin Workers lasted for three days in 1876 and for seventeen days in 1902; that of the Cigar Makers lasted for five days in 1866 and for eighteen days in 1896. Nevertheless, in fifty-six associations from which information was obtained the average length of the convention was seven days; in only twelve of these was the convention in session for more than ten days. The most protracted sessions are those of the Iron Molders, whose delegates continued to meet together in 1902 for twenty days. Certainly a week or even two weeks seems a very short time in which to adopt needed legislation, clear the docket of judicial cases, elect officers, audit accounts, levy dues, appropriate funds, declare strikes, and transact the numerous other items of business which have been accumulating during the year or more since last convention.

Short as is the period allotted for the meetings of convention, much time is lost in waiting for committees to report. Little is ever accomplished on the first day, since the convention can take no action until the credential committee determines the right of the delegates to take part in its deliberations. After listening to the addresses of welcome, a recess is taken until the credential committee is ready to report. After the convention has organized, after committees have been appointed or elected and work has been assigned to each, the delegates mark time again until these committees are prepared to make their reports. During this interval the societies in the city where the convention is being held seize the opportunity to entertain the delegates, whose time is spent in part at least in attendance at picnics and entertainments. In consequence, most of the business is rushed through during the latter part of the session. During these last few days national officers must be elected and the place for next convention chosen. If the contest is a close one, much time is consumed in electioneering and wire-

pulling, and frequently, if there are several candidates, in taking a number of ballots. Sometimes only a couple of days remain in which to adopt amendments to the rules and formulate trade policies.

Some eleven organizations save time by having the credential committee meet a day or two before the delegates assemble, so that it can present its report immediately on the opening of convention. In four associations this committee also audits the financial accounts of the officers, and in two others it considers amendments and resolutions. Some sixteen other national unions, only two of which are included in the eleven noted above, provide that the committee on amendments and resolutions shall meet from three to ten days before the representative assembly convenes. This committee compiles carefully all amendments and resolutions referred to it by delegates and local unions. Sometimes this committee prints its report on the amendments and resolutions referred to it by the delegates and local unions, and places a copy in the hands of each delegate during the first days of the session. In at least two associations this committee also considers appeals and grievances, and in four associations it audits the financial accounts of the officers. As a result the convention has much greater opportunity to deliberate on matters brought before it, and is less apt to accept hurriedly the opinion of committees.

In fixing the basis of representation in convention, the same opposition has existed between the large and the small local societies as existed at the time of the founding of the American Commonwealth between the large and the small States. The members of the large local unions have demanded that representation should be proportional to membership. They point out the unfairness of allowing a society of twenty-five and one of a thousand members to have the same voting power in convention. They hold that the majority, not a small minority, should dominate.<sup>4</sup> On the other hand, the small local unions have demanded that each society have equal representation. They fear that if

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<sup>4</sup> Cigar Makers' Official Journal, March, 1880.



representation were proportional to membership, two or three large societies would dictate policies to all the rest. Such a condition is not indeed a baseless fear, conjured up by the small unions. Instances of it may be found whenever the system of representation according to membership has prevailed. In one national union the delegates from the large New York society constituted such a considerable proportion of the convention that frequently their vote would cause the rejection or passage of a measure. Among other things, the New York society wished to capture the presidency of the national union for one of its members, and in exchange for help in passing measures desired by other local unions it secured very easily enough votes to elect its candidate.

The trade unionists have not possessed sufficient funds to imitate the founders of the United States Government, and to create as a compromise two bodies, one in which each local union should be represented equally, and the other in which representation should be according to membership. In all the national unions there is only one representative assembly, but the system of representation in the assembly varies widely. During the early days of the older organizations, when they were still decentralized, the local societies were given equal representation irrespective of their size. The Bricklayers and the Printers, whose international unions were very loose confederations, continued this policy for some years, the Bricklayers from 1867 to 1890 and the Printers from 1852 to 1869. At the present time, of the twelve organizations which permit equal representation of local societies, six are young, decentralized associations.<sup>5</sup> Of the six older organizations, five are railway unions, and in the railway unions the subordinate lodges are of a more or less uniform size, since they do not embrace the workers in a certain locality, but those employed on a particular unit of the railway system.

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<sup>5</sup> The twelve organizations are as follows: Ceramic, Mosaic and Encaustic Tile Layers and Helpers, Locomotive Firemen and Enginemen, Locomotive Engineers, Maintenance-of-Way Employees, Railroad Trainmen, Railway Conductors, Railway Employees, Slate and Tile Roofers, Steel and Copper Plate Printers, Switchmen, Table Knife Grinders, and Wood, Wire and Metal Lathers.

One hundred and eleven other national or international unions make some attempt to apportion the number of delegates according to membership. To protect the small societies from domination by the large ones, however, twenty-five of these associations, most of them rather decentralized, give representation according to membership to local unions having less than a certain number of members, but limit all larger local unions to the same fixed maximum number of delegates.<sup>6</sup> Thus, since the abolishment of the system of equal representation in 1869, the International Typographical Union has permitted local unions with less than a thousand members to have from one to three delegates, according to size, but has limited all having a thousand and over to four delegates.<sup>7</sup> Seventeen other associations, though fixing no maximum limit to the number of delegates which a society may send to convention, favor the smaller local unions by increasing the basis of representation as the number of delegates from a society increases. The Brotherhood of Boilermakers and Iron Shipbuilders thus allows one delegate for the first ten members, a second for the next twenty, and one additional for each fifty members or major part thereof.

In fifty-six of the one hundred and eleven national unions representation is proportional to membership. The number of members which each delegate may represent remains constant, no matter how large the local society. The small local unions have still the advantage, since each society is allowed one delegate even though it have much fewer members than the maximum number which a single delegate may represent. Thus if the basis of representation

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<sup>6</sup> These are the following unions: Bakers and Confectioners, Bill Posters and Billers, Bricklayers and Masons, Brushmakers, Carpenters and Joiners, Garment Workers, Glove Workers, Granite Cutters, Heat, Frost and Asbestos Workers, Hod Carriers and Building Laborers, Hotel and Restaurant Employees, Horseshoers, Leather Workers on Horse Goods, Painters, Decorators and Paper Hangers, Post Office Clerks, Printers, Printing Pressmen and Assistants, Quarry Workers, Retail Clerks, Stationary Firemen, Tailors, Watch Case Engravers, Wire Weavers, Wood Carvers, and Woodsmen and Saw Mill Workers.

<sup>7</sup> Proceedings, 1869.

is one for each hundred members, the society with only ten members, as well as the one with ninety-nine members, may send one delegate to convention. The tiny local unions have very little advantage in national unions where the basis of representation is small,—only one delegate for each thirty, twenty, or even five members. But in thirty-five of the fifty-six, the basis of representation is one for each fifty or one hundred, and in the remaining fourteen, one for each two hundred, three hundred, or even five hundred. To protect the larger local unions, three of the above national unions require a branch having less than twenty-five members to combine with another to send a delegate, provided the two have a combined membership of twenty-five or more. Three others deny representation to small local unions of less than twenty or twenty-five members.<sup>8</sup>

Unless, however, the expenses of the delegates are borne by the national union, the large branches, under a system of either equal or proportional representation, dominate the convention for the reason that the small unions cannot afford the expense of sending delegates. The cost of sending a representative is naturally a heavier burden to a small union than to a large one. If the expenses of a delegate were, for example, fifty dollars for a branch of ten members,

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<sup>8</sup> The following table shows in succinct form the various systems of representation in 123 national unions:—

	Number of Unions
Equal representation .....	12
Representation proportional to membership.....	56
Maximum limit to number of delegates representing one society, proportional representation for societies with less than the maximum number.....	25
Basis of representation increases as the delegates of a society increase in number.....	18
Basis of representation decreases as the delegates of a society increase in number.....	4
Basis of representation increases and then decreases as the delegates of a society increase in number.....	2
Each local union sends one delegate who casts a number of votes proportional to the number of members he represents .....	6
Total .....	123

the cost would be five dollars apiece. For a branch of one hundred members it would be fifty cents apiece. When, therefore, the local unions of a trade defray this expense, only a small proportion of them are usually represented.<sup>9</sup> Thus, of the one hundred and seventy local unions belonging to the International Union of Plumbers in 1898, only twenty were represented at the convention.<sup>10</sup> At the convention of the Carpenters in 1890 only one hundred and ninety-nine delegates, representing one hundred and fifty-seven branches, were present, though the general secretary reported that the national organization embraced seven hundred and four local unions.<sup>11</sup>

Sometimes a local union which cannot afford the expense of sending a representative to the convention requests the delegate from a nearby local union to introduce the resolution it desires to have adopted, and to vote for it by proxy. The system of representation by proxy has been tried by all the older national unions, and is expressly permitted by the rules of thirteen out of one hundred and twenty-five organizations. The danger of proxy representation is that a single delegate, or a few delegates, to whom a large number of proxies have been entrusted may hold the balance of power in convention. When the vote is fairly close, these proxies may decide the fate of a measure. In exchange for these votes on certain questions, the proxy-holders may acquire control over a sufficient number of the votes of other delegates to secure the election of their candidate or the adoption of a particular resolution in which they are interested. For this reason four of the associations which permit proxies limit strictly the number which any one delegate may hold, and two give this privilege only to very small local unions. Moreover, a large number of unions forbid entirely the system of representation by proxy.

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<sup>9</sup> At least three associations consider that each local union, no matter how small, should shoulder the financial burden of sending at least one delegate, and they impose a fine on the subordinate union that fails to do so.

<sup>10</sup> Proceedings, 1898.

<sup>11</sup> Proceedings, 1890, pp. 6, 15.

Six national unions reduce the cost of representation in convention by providing that all local unions, irrespective of size, may send one delegate, each of whom casts, however, a number of votes proportional to the membership he represents.<sup>12</sup> Thirty-nine other associations permit the local societies to send less than the number of delegates to which the local society is entitled; the number may be limited to one, who in seven unions casts either fewer than, or, more usually, as many votes as the whole number of representatives to which the society is entitled. The same objection may be made against this system, however, as against that of proxy representation, namely, that it permits the concentration of too great a voting power. When in 1880 the Cigar Makers adopted a rule that a single delegate could cast all of the votes of his society, the largest local union, No. 144 of New York, with thirty-six hundred members, sent to the next convention one delegate privileged to cast thirty-six votes, or thirty-two per cent of the total number of votes in the convention. Five of the above thirty-nine associations, therefore, limit the number of votes which one delegate may cast, and thus each local society must send two or more delegates if it wishes to cast its full quota of votes.

Thirteen national unions pay the railway fare of their delegates in order to place at an equal advantage the branches near and those at a distance from the place of meeting, as well as to aid the small local unions which cannot otherwise afford to send representatives. Another national association pays the railway fare of delegates for each mile over five hundred; the other expenses are borne by the subordinate unions. Even with such financial assistance from the federal organization, many branches fail to be represented. Seventeen national or international unions have secured adequate representation to the small branches by paying the railway fare and hotel bills and other incidental expenses from the central treasury. In ninety-two

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<sup>12</sup> These are the following unions: Barbers, Chain Makers, Pilots, Saw Smiths, Travellers' Goods and Leather Novelty Workers, and Upholsterers.

organizations, or seventy-three per cent of those studied, the expense is borne wholly by the local unions.

When the expense is borne by the national union, the large local union is taxed in order that the small one may be represented. The local union of one hundred or one hundred and fifty members which formerly paid fifty cents per capita to send its own delegate to convention now pays sixty-five or seventy-five cents per capita to give representation to the branch of ten or fifteen members. The amount which the national organization pays in order that the small branch may send a delegate to convention may easily be larger than the amount which the small branch contributes during the year to the national union. To make the financial burden seem still more unfair to the large local unions, the small unions predominate when the expenses of the delegates are paid by the national organization, whereas the large local unions hold the balance of power when each subordinate society bears the expense. The provision that small subordinate unions with less than a certain membership are not entitled to representation eliminates some of the small local unions, but only four out of some seventeen national unions which pay the expenses of the delegates from the central treasury have this rule, and the number of members required for representation in convention—twenty-five in three organizations and twenty in a third—is too low to eliminate many of the small local unions.

Another objection to the payment of the expenses of delegates by the national union is that it results in making the convention too large for governmental efficiency. The number of subordinate lodges has been increasing in all organized trades, not only because of growth in membership, but also in consequence of the tendency to split up the original local unions into smaller units according to sex, branch of the trade, or nationality. In all organizations, therefore, the size of the convention has tended to grow larger, and the growth has been abnormal in those associations which meet the expenses of the delegates from the central treasury. At the convention of Cigar Makers held in 1877, soon after

the industrial depression, seven delegates were present, in 1883 there were eighty-five, and at the convention of 1896, two hundred and forty-five. In some national organizations which do not pay the expenses of delegates the convention is restricted to a fairly convenient size only by the failure of many local unions to send representatives. Thus, at the convention of the United Brotherhood of Carpenters and Joiners in 1890, only one hundred and fifty-seven out of seven hundred and four local unions were represented by one hundred and ninety-nine delegates. Had each of the seven hundred and four subordinate lodges sent delegates, the convention would have been too large to transact its business effectively.<sup>13</sup> Over seventeen hundred local unions now owe allegiance to the United Brotherhood of Carpenters and Joiners, and if each of these should send one or more delegates to the convention, the representative assembly would be a mass-meeting too bulky to be handled in any efficient manner. The system of paying the expense of delegates from the national treasury is, therefore, not popular with unions, like those of the building trades, which have a large number of comparatively small local unions.

One plan to reduce the size of convention and yet allow representation proportional to membership is to group the local societies into districts and to require that those within each district join together in electing delegates. The basis of representation of the district in the national body could be made fairly large, say one delegate for each three hundred, five hundred, or even one thousand members. The size of the national convention would be reduced, and the basis of representation would be more equitable. The cost of holding convention would be less, and so more frequent or more protracted sessions could be held. This plan has been proposed repeatedly in American trade unions. A few of the older organizations have tried it, but they have always failed.<sup>14</sup> The failure to establish this system may perhaps

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<sup>13</sup> Proceedings, 1890.

<sup>14</sup> The Iron Molders, who adopted the system in 1886, abolished it two years later (Constitution, 1886). For another instance, see *Machinists and Blacksmiths' Journal*, October, 1872, p. 805.



be ascribed to the decentralized character of American trade unionism. The local union, jealous of any infringement of its political prerogatives, refuses to lose its identity in the national council by any form of district representation.

As the activities of the national union increase, the convention becomes more and more ineffective as a method of transacting business, and its power declines rapidly. This decline may be marked off into three very roughly defined stages. During the first of these, the representative assembly has been the chief, in fact, almost the sole organ of government. This stage occurs during the early days of an organization, when it is still loosely decentralized, and it exists in some of the newer associations even today. The functions of a loose confederation of local unions are primarily legislative and judicial, and such functions the convention performs quite easily. The amount of executive work is very limited, and the few unpaid officials are elected from among the delegates at the convention primarily for the performance of certain services at its sessions, and they have few or no other duties.

The second stage appears with the growth of the activities of the central organization, and is marked by the creation of certain paid and unpaid officials and boards of management which levy assessments, sanction the declaration of strikes, perform innumerable detailed executive duties, make judicial decisions, and sometimes exercise a limited legislative power during the period between conventions. The representative assembly remains, however, the highest authority in the organization. It usually continues to elect officers, to remove them for misdemeanors or neglect of duty, and to audit their accounts. It overrides their judicial decisions, and declares strikes which they have refused to sanction. It is true that only a very few of those who are discontented with decisions of the national officers or national executive board appeal to the convention; in consequence, its judicial work becomes very small, and it has little control over the strike policy of the organization. At the same time, the influence of the paid officers over the convention grows



rapidly. Giving their entire time to the work of the union, these officials gain an intimate knowledge of the conditions of the trade and the internal affairs of the association, and the delegates must rely greatly on their judgment. Indeed, an increasingly larger part of the time of convention is devoted to the ratification or rejection of the legislative and executive program outlined by the officers in their reports to the representative assembly.

In the third stage, government by popular vote is substituted for government by the representatives. This stage is difficult to mark off chronologically, since some organizations have used the so-called initiative and referendum from the beginning of their history. Moreover, the extent to which the representative assembly has been replaced by the referendum varies in different associations. Some unions have abolished conventions, or convoke them at infrequent intervals. Another group continues to hold conventions regularly, but submits all enactments of that body to the vote of the members. A few unions require that appeals from judicial and strike decisions of the officers be made no longer to the convention but to the general membership. In others the only change has been that officers are now elected by vote of the members, and not as formerly by convention. In another fairly large group the referendum is used merely to adopt emergency legislation between the sessions of the representative assembly, and since the representatives are at liberty to revoke or amend such emergency legislation, the power of convention is in no wise limited. Finally, there remains a considerable number of unions which refer no questions of any kind to popular vote, and in these the convention continues to be the primary organ of government.

## CHAPTER X

### THE OFFICERS OF THE NATIONAL UNION

Certain governmental machinery is needed to do administrative work which a representative body like a convention cannot perform. From the beginning of national trade unionism some one has been required to collect revenue, and a corresponding secretary has also been needed to serve as the agent of communication between the local societies and the national union. Some one has had to do a policeman's work in enforcing the observance of the national rules. As the activities of the federal organization have developed, an executive has been created to manage the complicated administrative machinery.

Certain machinery of government is also required to make decisions on matters the consideration of which cannot be postponed until the next convention. One question which must nearly always be decided immediately is the desirability of a strike. Sometimes, indeed, the postponement of a strike may preclude the necessity of its declaration, since greater deliberation may show the lack of necessity for it, or further conference with employers may secure its peaceful adjustment. When the declaration of a strike seems inevitable, the delay which furnishes the employer an opportunity for preparation may steal away most of its effectiveness. Industrial conditions change rapidly. 'At the moment, all may be propitious; if action is postponed until the next convention, the opportunity will be lost.

Moreover, the strike, the success of which seemed reasonably certain at the time when it was declared by the convention, may become a hopeless venture after the adjournment of that body because of an unexpected change in industrial conditions. For this reason, trade-union leaders dislike exceedingly to be bound by rigid and specific instruc-

tions of the representative assembly. We find the secretary of the Miners' Association of Western Pennsylvania complaining in 1880 about the "iron jacket of orders from convention." The previous convention had ordered a strike of miners in all collieries located along the railroads leading into Pittsburg; but the miners at the collieries located beside the rivers, by which coal was sent to Pittsburg, remained at work, and during the first week of the struggle the coal which they mined was sent to fill the contracts of the operators of the railway mines. From the beginning, therefore, the ultimate failure of the strike was clearly apparent. The secretary felt himself bound by the specific orders of convention, however, and feared by disobedience to bring down upon himself the wrath of the organization and the accusation that he had been bribed by the operators. The custom of restricting the officers to the mechanical duties of obeying orders from conventions he declared to be absurd. The opinion of one who is paid to study the markets and, if necessary, visit the places where coal is sold should have due weight, he thought, and much should be left to his discretion.<sup>1</sup>

In other words, the trade union is a belligerent association nearly always engaged in a guerilla struggle with employers, sometimes in wide-spreading general combat; and for success in war, industrial as well as military, prompt decisions and a flexible policy are requisite. The very life of the organization may be the penalty of long delay and rigid rules. Therefore, between conventions some governmental body must have authority to declare strikes, to conduct them, to call them off, or to levy special assessments when the funds are exhausted by a long struggle.

During the period between conventions some judicial authority must be created to interpret the meaning of vague or conflicting rules, otherwise the carrying out of the activities of the organization may be abruptly halted. Some judicial authority must also be created to discipline local unions and individual members and to hear appeals of mem-

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<sup>1</sup> National Labor Tribune, February 21, 1880, p. 1.

bers from local unions. If no such authority exists, the guilty may delay their punishment and the acquittal of the innocent may be postponed.

Usually the representative assembly has jealously endeavored to retain exclusive legislative power, but its efforts have nearly always failed. Unexpected problems are continually arising for which the rules make no provision. Moreover, the rules, hastily adopted by the convention, are frequently worded vaguely and carelessly, and to put them into operation is difficult or impossible. It may easily happen, for example, that while provision is made for the payment of a sick benefit, the administrative machinery to carry out such a plan is not created or is wholly inadequate. The Supreme Court of the United States has managed, by subtle reasoning, to stretch the rigid American Constitution to meet new conditions. The trade-union officials, with less respect for the forms of the law, have openly and flagrantly violated their rules. Sometimes edicts containing new legislation are promulgated by the chief executive under the guise of judicial decisions. Frequently not even this excuse is presented. One example may be cited from the history of the Cigar Makers' International Union. In 1885 two local societies of cigar makers in Cincinnati issued a circular attacking the president of the international union and questioning the honesty of his intentions. The president promptly replied with an order to the effect that any local union making charges against an officer during the interval between convention and failing to substantiate them would forfeit its charter. This order was practically new legislation; but, going even further, the president gave the law a retroactive application by suspending the local union.<sup>2</sup>

Such unconstitutional acts occur most frequently during the early days of an organization when its rules are still in a formative stage, are general and vague, and have not yet, through experience, been elaborated in detail to meet contingencies. At practically every convention of the Iron Molders from 1864 to 1874 the general president reported

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<sup>2</sup> Proceedings, 1885.

that he had violated some rule or had created new ones. "I am prepared," he declared on one occasion, "to lay the constitution on the shelf and to do what seems best to save the organization, believing that it is better to have an organization without a constitution than to have a constitution without an organization."<sup>8</sup> Each time the convention pardoned his unlawful acts on the ground of expediency, or allowed him to escape with only a perfunctory reprimand.

The unlawful creation of new rules and the violation of existing ones by the officers is still found in some of the younger associations. The officials of perhaps a dozen of the newer unions with whom the writer has discussed this question have argued frankly that they must exercise such legislative power in order to run their organizations. In support of this contention, the chief executive of a union which was organized very recently gave the following illustration. The so-called constitution or book of rules adopted by the first convention was, he declared, a mass of generalities and inconsistencies, and was wholly unusable. He therefore rearranged and reworded the rules very carefully, and even added explanatory sections in an endeavor to express in consistent and intelligible form the ideas of the delegates as he remembered them. The rules which he thus formulated he caused to be printed and to be presented to his fellow-members. Naturally, as he naively confessed, many objections were made at first; but complaint soon ceased, and the union has continued to be governed by the rules which he promulgated.

In most organizations efficient and expeditious machinery for the adoption of amendments to the constitution during the period between conventions has been gradually created, and with this development there have been fewer violations and a more wholesome respect for the rules by officers and members. Indeed, some of the officials of the older and better organized unions, when asked whether they exercised unconstitutional legislative power, seem as much shocked at

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<sup>8</sup> Proceedings, 1867.

the idea as might have been a law- and precedent-loving judge of a superior court.

The officers in the early national unions were such as had been found necessary for the government of the local societies.<sup>4</sup> Nor during these early years were they unsuitable. In the local union the primary organ of government was the mass-meeting of members, and in the federal association it was the representative assembly. For the conduct of both the local mass-meeting and the federal assembly the same officers were needed, namely, a president to act as chairman, a vice-president to take his place when he was absent, and a recording secretary to keep the minutes. Between the meetings there was also needed for both local and national union a corresponding secretary, a financial secretary to collect dues, and a treasurer to take care of the funds. In 1851 the Printers made provision in their first constitution for a president, a vice-president, a recording secretary, a corresponding secretary, and a treasurer;<sup>5</sup> the Iron Molders in 1859 provided for a president, a recording secretary, a corresponding secretary, a treasurer, and a door-keeper;<sup>6</sup> the Cigar Makers for a president, a vice-president, an English recording secretary, a German recording secretary, a corresponding secretary, and a treasurer.<sup>7</sup>

Between conventions these officers had few duties to perform. At one of the early conventions of the Iron Molders' Union the president reported that there were so few duties for each officer that each one tried to do the work of all the rest.<sup>8</sup> The corresponding secretary of the same national organization complained in 1863 that he had very little to do. He seldom heard from the local unions except at long intervals when some local secretary happened to remember

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<sup>4</sup> The officers elected at the first national convention of Cigar Makers in 1864 were, with a single exception, the same as those provided for in the earliest extant constitution of the New York local union of the trade.

<sup>5</sup> Constitution, 1851.

<sup>6</sup> Constitution, in *Synopsis of Proceedings*, 1859.

<sup>7</sup> Constitution, in *MS. Proceedings of the Convention*, New York, June 21, 1864.

<sup>8</sup> *Iron Molders' Journal*, June, 1875.

that one requirement of the constitution was that subordinate societies should submit monthly reports. The financial secretary of the national union reported in 1863 that he had not heard from any local officers and had not performed any work for the organization during his term.<sup>9</sup> At first these officers were all unpaid. Later, some of them were voted annually by convention small sums, perhaps one hundred or two hundred dollars, or were given travelling expenses and were reimbursed for the time during which their official duties prevented them from working at their trades.

Some of the decentralized unions retained for some years the system of unpaid or nominally paid officials with few duties. The Printers continued this policy from 1852 to 1882, and the Bricklayers and Masons from 1867 until recently. In other trades, as the functions of the federal organizations increased, the system became wholly unworkable. Cooperation in the transaction of business between officers located in widely separated parts of the country was, to say the least, inconvenient. Few also were found willing to serve as officers without pay. Frequently these positions went begging, and usually new men were elected each term. Moreover, as often happens when men serve without pay, the officers were dilatory in performing their duties or neglected them entirely. On one occasion the secretary of one union became so disgusted with this system of government in general and the negligence of his brother officers in particular that he secured authority by vote of the local unions to exercise, with some assistance from the treasurer, all functions of government until the next convention.

A second stage was reached when all duties between conventions were performed by a single paid official. This stage was quickly attained in the unions of cigar makers, iron molders, iron boilers and puddlers, and other organizations whose activities increased so rapidly that there was soon enough work to keep one man busy. In the Iron Molders' Union after 1864 all power—executive, judicial,

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<sup>9</sup> Proceedings, 1863.

and even legislative—was vested during the period between conventions in a single paid officer, known as the president. The president acted as financial and corresponding secretary, edited the trade journal, and admitted new local societies to the federation. When time permitted, he attempted to organize the workers in non-union places. He visited localities where a strike was imminent, and endeavored to adjust the difficulty. As a combination of policeman and judge, he interpreted the national rules and enforced their due observance, sat in judgment on appeals of members from decisions of local unions, and adjusted differences between local unions. As a legislator, he promulgated rules on questions not covered by the existing constitution, and broke the rules whenever he thought that the emergency demanded such action. There was indeed one matter over which he had no power. He could not declare a strike. Also, though he collected the revenue, he was not entrusted with the safe keeping of the funds, these being under the care of the unsalaried treasurer. A similar development occurred about this time in the National Forge of the Sons of Vulcan.<sup>10</sup> A single salaried official exercised executive, judicial, and legislative functions. As in the Iron Molders' Union, he could not declare a strike, and was not entrusted with the care of the funds; otherwise his power was absolute during the period between conventions.<sup>11</sup>

The third stage in the development of the official staff was reached when the amount of business to be done had become too large for one person and was divided among several salaried officials, all of whom were stationed in the city selected as headquarters of the association. The two officers now found in the great majority of international unions are the president and the secretary or secretary-treasurer. The president acts as chairman at meetings of convention and

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<sup>10</sup> Vulcan Record, vol. i, no. 6; Constitution, 1874.

<sup>11</sup> This feature of government was borrowed without change by the Amalgamated Association of Iron and Steel Workers, formed by the amalgamation of the Sons of Vulcan with two other national unions of iron and steel workers in 1875.



of the general executive board. He has supervision over the administrative affairs of the organization. He is a policeman enforcing the rules, and is frequently also a judge. He travels often to various parts of the country to organize new local unions, to encourage the weak ones, and to adjust disputes between the workmen and their employers.

The secretary or secretary-treasurer acts as secretary at meetings of the convention and of the general executive board. He serves as a medium of communication between the local societies and the central union. He edits the trade journal, save in a few organizations which have created a special official for this purpose or which entrust the president with this duty.<sup>12</sup> He keeps the financial accounts, and in a large majority of unions also has charge of the funds. In about forty out of one hundred and thirty international unions, however, the secretary must turn over all funds to a treasurer. This system has grave inconveniences. The duties of the treasurer require only a small part of his time; and usually he is paid no salary or only a nominal sum. He works at his trade and lives in his home city, which is probably at some distance from headquarters, where the secretary is stationed, and much time and energy are wasted in sending money back and forth. When a strike has been declared, funds are usually needed immediately by the local strike committee, and delay in obtaining them may cause serious results. For these reasons, most unions require the secretary to take care of the funds. In these unions he bears the title of secretary-treasurer.

In certain large and highly centralized unions having a great mass of business to be transacted the work of the secretary is divided among several paid officials. In fourteen out of one hundred and thirty unions an official known as the editor relieves the secretary of the work of editing the

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<sup>12</sup> The president serves as editor of the trade journal in the unions of railway conductors, teamsters, and leather workers on horse goods. The president of the National Brotherhood of Operative Potters is editor-in-chief of the journal, and the secretary is assistant editor.

trade journal.<sup>13</sup> In the Iron Molders' Union there are, besides the editor of the journal, an official known as the financier who keeps the financial books of the federal association and maintains general oversight over those of the local societies, a treasurer to safeguard the funds, a general secretary who conducts all correspondence and purchases the supplies, has reports printed, and attends to other similar business, and an assistant secretary who gives whatever aid is needed to the secretary and the financier. In the United Brewery Workmen there are three secretaries in addition to the editor of the journal. One of these secretaries attends to all correspondence. Another—the financial recording secretary—acts as recording secretary at meetings of the convention and of the general executive board, receives the dues, compiles statistics, and helps to conduct the correspondence. The third—the secretary-treasurer—keeps account of receipts and disbursements, has charge of the funds, buys supplies, and is responsible for the general conduct of the office. Another group of associations do not distribute the work of the secretary-treasurer among several officials, but provide an assistant secretary-treasurer to help in any way that may be needed.<sup>14</sup>

A few large and highly centralized unions have created travelling officials to relieve the president of duties requiring him to journey to various parts of the country. If this were not done, much of his time would be consumed in travelling, and he would be unable to perform his other duties. When the president is frequently absent from headquarters, the secretaries confess that they often assume the judicial robe of the president in order to clear the docket of rapidly accumulating cases, and that, when emergency demands, they discharge without constitutional warrant other powers of the

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<sup>13</sup> These unions are as follows: Bakery and Confectionery Workers, Brewery Workmen, Commercial Telegraphers, Iron Molders, Iron, Steel, and Tin Workers, Locomotive Engineers, Locomotive Firemen and Enginemen, Machinists, Maintenance-of-Way Employees, Mine Workers, Metal Polishers, Post Office Clerks, Stereotypers and Electrotypers, and Switchmen.

<sup>14</sup> In this group are the following unions: Coopers, Flint Glass Workers, Iron, Steel and Tin Workers, Machinists, and Tailors.

chief officer. Many times, however, the secretary hesitates to assume such responsibility, and business needing the immediate attention of the president is woefully neglected.

Very early in the history of the older organizations the president was relieved of part of the work of travelling by the appointment of special strike deputies who visit localities where strikes are imminent or in progress, send detailed reports of conditions to headquarters, and whenever it is possible bring about a peaceful settlement of the difficulty. Very early, also, the president was permitted to appoint organizers to stimulate the promotion of local societies in non-union districts. The vice-presidents, varying in number in the different organizations, are commonly utilized as organizers and strike deputies, though many national unions appoint other members to perform such service. Sometimes a vice-president is assigned to a particular district, but frequently he may be dispatched to any part of the country at the discretion of the president. A travelling officer with a specialized work is the union-label agitator. At national conventions and local meetings he advocates the purchase of goods which bear a label indicating that they have been manufactured by members of the union. Another travelling official found in the Cigar Makers' International Union and a few other organizations is the so-called financier, who goes from branch to branch, generally arriving unexpectedly, overhauls the financial accounts, and, when necessary, reorganizes the system of financial administration. The Cigar Makers' International Union, which makes use of strike deputies, label agitators, organizers, and a financier, has taken the lead in this division of labor among several travelling officials.<sup>16</sup>

A fixed salary is paid to the president by some sixty-two of one hundred and ten associations. In one of these unions he receives only one hundred and twenty dollars, in another

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<sup>16</sup> The president of the Cigar Makers' International Union spends most of his time at headquarters, where, aided by various clerical assistants, he performs the duties of president, secretary-treasurer, and editor of the trade journal.

two hundred dollars, and in two others only a nominal sum. In the other fifty-eight organizations his salary is sufficiently large to enable him to devote his whole time to the organization. Two unions pay only a thousand dollars, the others larger amounts, ranging in most of them from one to two thousand dollars. A few aristocrats among the labor officials, usually in unions, such as those of railway employees, whose members are skilled and well paid, receive as much as five thousand dollars a year. Forty-eight associations, including many small, weak, recently organized unions, make no provision for the salary of the president. In a few of them that officer is voted a sum of money regularly or occasionally by convention. In most of them he works at his trade, but is allowed travelling expenses and receives compensation for time lost in performance of his official duties, usually at the rate of wages prevailing in the craft. Sometimes the holder of such an unsalaried office makes great sacrifices in the cause of unionism. Frequent absences from work render him unpopular with his employer, who, conceiving the labor leader to be an agitator and a disturbing influence, is already prejudiced against him, and discharges him on slight pretext. Such unpaid officials have declared to the writer that they have walked the streets for days vainly seeking for work. When the president receives no pay, naturally the position is not keenly desired. Oftentimes good candidates cannot be induced to accept the office, or, if elected, refuse usually to serve a second term.

Almost invariably the secretary-treasurer is paid a salary, but in at least twelve out of a hundred associations he receives only a nominal sum ranging from about thirty dollars to three hundred dollars. The secretary-treasurer in these unions, all of them small and newly organized, works at his trade, and performs the duties of his office at night or during holidays.

The vice-presidents usually work at their trade and receive only travelling expenses and compensation for time spent in the performance of their official duties; but in at least twelve out of one hundred and ten associations, in-

cluding the larger and financially more prosperous ones, from one to seven vice-presidents are employed continuously by the union at a fixed salary.<sup>10</sup> When the vice-presidents are not utilized as strike deputies, organizers, or label agitators, the members who are appointed to such positions are sometimes employed continuously at a fixed annual salary. For example, organizers who act as strike agents and perform other duties as occasion requires are kept constantly in the field by the Bakers, the Barbers, and the Tailors. More frequently, however, such travelling officials are hired temporarily by the national president or the executive board as they are needed.

There is a sharp contrast between the office facilities at the disposal of the officials of a weak and struggling and of a strong and powerful trade union. "This is the headquarters of the international association," grandiloquently remarked the secretary of a small union, as he pointed to a dilapidated desk standing in one corner of the family living room, where nightly after his work in the factory he performed the duties of his office. In the same city a few blocks away the officers of another organization are housed in a large, modern, splendidly built office-building. Here the elevator carries the visitor to the ninth story where the suite of rooms rented by the union is located. One enters a large reception room where a number of clerks are busily employed. Beyond is the private office of the president, and a nearby room is occupied by his private stenographer. In a large adjoining room the secretary, his assistant, and several clerks are at work. The editor has his own little den. There is also a committee or conference room where, around a large table, meetings of the executive board are sometimes held. The rooms are not furnished luxuriously, but are equipped with all necessary office fixtures,—rugs, oak chairs, tables, desks, filing cases, shelves, iron safes, presses, and typewriting machines.

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<sup>10</sup> Among these unions are included those of the Bricklayers and Masons, Iron Molders, Iron, Steel and Tin Workers, Miners, Printers, and several organizations of railway employees.

Trade-union leadership is a profession, and to make a success of it native ability and experience are required. The leader must learn to write, not necessarily grammatically, but with force and clearness. He is doomed to an unending succession of speeches, and so must develop self-possession on the platform and the power to hold audiences. He must know how to handle his men. He must learn that much profanity, particularly in dealing with employers, does not constitute forcibleness or diplomacy. He must know intimately the conditions of the trade and also much about the cost and methods of production. He must be resourceful, constructive, and patient; he must be constantly ready to meet new and unexpected situations with few resources to aid him, and perhaps with a discouraged and carpingly critical following at his back.

The trade unions have made little attempt, however, to impose qualifications on the candidates for international offices. Usually, of course, the candidate must have been a member of the union for a certain length of time. Some of the early unions provided also that only delegates to the representative assembly should be eligible, but this limitation on the selection of candidates was soon found to be undesirable and was abolished. Nevertheless, the important officials are usually picked men. Most of them have held some office, such as that of president, secretary, or business agent in the local union. Often they have also served as delegates at one or perhaps several conventions. Sometimes they have held minor offices in the international union; perhaps they have been organizers or label agitators, have later been made vice-president, and finally have been promoted to the presidency or the secretaryship. Yet even with this preparatory education in subordinate positions, the newly elected leader comes to his office as very raw and crude material, and attains efficiency only after some years of experience.

For this reason the older unions have tended to lengthen the term of office and to reelect officials for several terms. A president of the Cigar Makers' International Union, who was first elected in 1877, continued to hold that position

until 1891. Then he resigned, to discharge, at the request of his fellow-members, the less strenuous duties of financier for the union. His successor continues to occupy the office of president. The president elected by the Iron Molders at the third convention in 1861 was continued in office until his death nine years later. The terms of each of his successors have been as long or longer. The secretary of the provisional committee formed to bring into existence a federal association of carpenters in 1881 became the first secretary-treasurer of the newly established union, and continued to hold office for nearly twenty years.

What becomes of the trade-union leader when he is defeated for reelection? Sometimes, indeed, he returns to his trade, but not very often. Years of office work have rendered him incapable of manual labor or have created a disinclination for it. Some ex-officials, relying on the patronage of a large host of acquaintances gained through their former positions, have opened saloons, and are doing a thriving business. Some of the younger ones have studied law. Many have gone into politics. Various former officials of the miners' union are now state mining inspectors. Some union leaders occupy positions in state bureaus of labor and statistics. Some hold offices in one or another department of the Federal Government. Some have been elected to various city councils. A few have attained membership in the Congress of the United States. Trade-union leadership is, as Sidney and Beatrice Webb have pointed out, excellent training for political life.<sup>17</sup> Such men know the needs of the working class and are sometimes well fitted to represent them in state and Federal legislatures. If a labor party shall finally emerge in the United States, trade-union leaders will probably increase in political prominence, and their influence will be strongly felt in the shaping of legislation.

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<sup>17</sup> *Industrial Democracy*, pp. 65-71.

## CHAPTER XI

### THE NATIONAL EXECUTIVE BOARD

National executive boards were created to serve as a check on the power of the national officers. Prior to the panic of 1873, however, no such executive boards existed in any of the more important national associations. To be sure, the national unions of Cigar Makers<sup>1</sup> and Bricklayers<sup>2</sup> had so-called executive committees, but these committees were composed solely of national officers.<sup>3</sup> An exception was the national trade association of hat finishers. The executive board of this association, composed of eight members—none of them holding any other office—exercised judicial power which in other associations would have been vested in the president or other national officials.<sup>4</sup> Another exception was the Journeymen Stone Cutters' Association, whose committee of management, composed of eight members, was elected by the local union or unions in the city chosen as headquarters of the association, in imitation of the English system of the governing branch. Since the committee of management was vested between conventions with all judicial and all executive powers requiring the exercise of much discretion, there remained for the one salaried officer only purely routine secretarial and financial duties.

In the other associations the national officers were wholly

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<sup>1</sup> Constitution, in MS. Proceedings of the Fourth Annual Session of the Cigar Makers' International Union, Buffalo, N. Y., September 2-6, 1867.

<sup>2</sup> Constitution, 1867.

<sup>3</sup> The executive committee of the Cigar Makers' International Union was composed in 1867 of the president, vice-president, secretary, and treasurer. In the Bricklayers' and Masons' International Union it consisted about this time of the president, vice-president, and secretary.

<sup>4</sup> Constitution, 1863.



unchecked by any higher authority during the period between conventions. Luckily the functions of the federated unions were so few that the officers had very little opportunity to display arbitrary power. But the functions of the national unions were increasing rapidly, and at the same time duties which had been divided among several unpaid officials were being vested in a single salaried officer. On his growing absolutism the infrequent conventions exercised little restraint. In the absence of a general executive board, therefore, he exercised despotic power, never hesitating even to overturn the old rules or to adopt new ones whenever an emergency demanded such a course of action.

After 1875 a tendency to form general executive boards became manifest, and by 1880 such boards were being maintained by practically all existing national unions. At the same time, organizations like the Cigar Makers' International Union were enlarging their executive boards to include a majority of other than paid officers. The paid officials who had ruled so long with unrestricted powers not infrequently made stubborn resistance against the inauguration of a policy which deprived them of their authority. In the International Union of Machinists and Blacksmiths a bitter fight was fought about 1874 between the president and the new executive board, and this quarrel may have added its weight to the existing industrial depression in pushing the union downhill toward the utter demoralization which occurred a few years later.

In the Iron Molders' Union the president was emphatic in expressing his antagonism toward the newly created executive board, which he denounced as a foreign device utterly alien to American trade unionism. The president, led on by almost unlimited opportunity, had yielded to temptation, and had appropriated some of the funds. One of the first results of the creation of the executive board was the discovery of this malfeasance. The president strove desperately to maintain himself in power. He began with the declaration that he would not be the clerk of any board

or committee. Restricted in authority by the new governmental reorganization, he was nevertheless not wholly impotent. His chief weapons of defense were power to expel from the organization and control over the trade journal. In the official trade journal he denounced the accusations made against him as libels inspired by the desire of his enemies to remove him from office and secure the position for a rival. He refused to publish any statements by the other side. When one member of the national executive board persuaded his local union to publish and distribute a circular containing a statement of the board's position, the president suspended the local society, and so made this member ineligible to hold office. Several members of the board who belonged to subordinate branches which were somewhat remiss in the payment of assessments were likewise rendered ineligible by the suspension of their local unions. Other members of the board were removed from office on the charge of failure to attend to their duties. The efforts of the president were fruitless. A special convention was called, and this convention removed him from office and elected his successor.<sup>5</sup>

In the Cigar Makers' International Union friction arose in 1883 between the president and the executive board because of the failure of the constitution to define carefully their respective powers. Charges of overstepping his authority were brought against the president, and these charges the executive board proceeded to investigate. The president denied the right of the board to do so. He refused to appropriate the money necessary for the investigation, and, when the money was advanced by the local society making the charges, he refused to accept the decision. A careful investigation by the convention was necessary before the controversy was finally settled. At the same time, the respective powers of the president and of the board were more precisely defined.<sup>6</sup> The executive board was vested

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<sup>5</sup>Iron Molders' Journal, December 10, 1878, January 10, 1879; Proceedings, 1879.

<sup>6</sup>Proceedings, 1883.

with authority to try accused officers, including the president, and to submit their findings to a vote of all the members of the union.

The creation of the executive board has limited greatly the judicial power of the president. In more than fifty of the one hundred and thirty unions he possesses no judicial power. Only in nine organizations can he discipline the local unions,<sup>7</sup> such authority being reserved to the general executive board. To prevent the board from wasting its time in the consideration of unimportant complaints, the president is frequently given authority to hear appeals of members from decisions of local unions, but appeals may nearly always be made from any of his judicial decisions to the executive board. Very frequently, indeed, the board merely confirms the judgment of the president, as is shown by the following table to be the case in the Cigar Makers' International Union:—

**APPEALS FROM DECISION OF PRESIDENT TO THE EXECUTIVE BOARD  
IN THE CIGAR MAKERS' INTERNATIONAL UNION**

Years	No. of appeals	President's decision overruled
1883-1885	21	1
1885-1887	31	1
1887-1889	57	1
1889-1891	43	0
1891-1893	48	1
1893-1895	64	0

Nevertheless, trade-union officials are undoubtedly influenced by the fear of having their judgments overruled by the executive board. Extra constitutional legislative power is still exercised by the president in some of the newer associations; indeed, three unions definitely authorize that official to promulgate rules not conflicting with the constitu-

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<sup>7</sup> The president is permitted to discipline the local societies in the following unions: Locomotive Engineers, Locomotive Firemen and Enginemen, Maintenance-of-Way Employees, Railroad Trainmen, Railway Clerks, Railway Telegraphers, Stationary Engineers, and Street and Electric Railway Employees.

tion.<sup>8</sup> Many associations, on the other hand, take away his excuse for usurping the role of legislator by providing for the initiation and adoption of amendments to the constitution by vote of the members, and sixteen unions achieve the same result by vesting the executive board with limited legislative power.<sup>9</sup>

The executive board levies assessments, appoints temporary officers to fill vacancies, and performs other duties which were vested in the president in the early days of the older organizations. The duty of declaring strikes, which none of the older organizations ventured to entrust to the president, has been delegated to the executive board by practically all unions save the few which submit this question to popular vote. Perhaps the most important function of the board is to bring to trial and remove officers for misdemeanors and neglect of duty, since control over officers depends so largely upon the ability of the board to exercise this power.

The executive board exercises important functions in all save fourteen national unions. The exceptions are the National Association of Marine Engineers, the Paving Cutters' Union, three organizations of iron, steel, and tin workers,<sup>10</sup> and nine unions of railway employees. The sole function of the executive board in the National Association of Marine Engineers is to declare strikes, and in the Paving Cutters' Union to levy assessments and discipline the

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<sup>8</sup> These are the Railway Expressmen, Window Glass Workers, and Window Glass Cutters and Flatteners.

<sup>9</sup> The executive board can enact rules not conflicting with those already passed by convention in the following national unions: Bill Posters and Billers, Boot and Shoe Makers, Brick, Tile, and Terra Cotta Workers, Brushmakers, Fur Workers, Glass House Employees, Glass Workers, Rubber Workers, Slate Workers, Theatrical Stage Employees, and Tip Printers.

The Glass Bottle Blowers permit the board to suspend the rules until next convention, and the Leather Workers for ninety days.

The Flour and Cereal Mill Employees give the board of management authority to adopt rules governing the label; the Railway Clerks, rules relating to the insurance department; and the Wood, Wire, and Metal Lathers, general administrative rules.

<sup>10</sup> These are the Iron, Steel and Tin Workers, the Blast Furnace Workers and Smelters, and the Tin Plate Workers.

local societies. In the Tin Plate Workers' International Protective Association the only definite duty of the executive board is to levy assessments. In the other two unions of iron, steel, and tin workers the board has no definite functions save the very vague one of advising the national officers on matters not covered by the rules. In five of the nine railway unions the board may bring to trial and remove officers, in two unions it exercises a very limited power of appeal, and in two others it has both of these functions.

Naturally, the power of the president is larger in associations where the executive board has been vested with very few functions than in those where the contrary is found. This is true, to be sure, only to a slight extent in the three unions of iron, steel and tin workers, since various committees of the district unions declare strikes, render judicial decisions, and perform functions which are delegated in other organizations to the executive board. In the remaining eleven associations the president is very powerful. The secretary of the Paving Cutters' Union and the presidents of the various railway unions thus have authority to determine whether local societies shall be permitted to strike with the financial support of the federal organization,—a power which was not wielded by despotic officials of the Iron Molders' Union and other long established associations even in the early days. Again, in seven of the nine railway unions the finality of the president's judicial authority is undoubtedly much increased by denying the right of appeal to the executive board from all or most of his decisions.<sup>11</sup> During the weeks until the next convention his decision must be accepted as final. Appeals are also apt to be less frequent, since by the time the delegate assembly convenes the dispute may have been forgotten, or changed conditions may have rendered a reversal of the decision useless. In nine associations the executive board is composed wholly or

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<sup>11</sup> Four unions permit no appeal to the executive board from any of the president's decisions, and three others only from certain important decisions, such as suspension of a local society or a judgment on some question not covered by the rules.

in large part of salaried officials who are stationed at headquarters and work together daily in close relationship. Hence the board fails of its chief purpose, namely, to restrict the power of such paid officials during the period between conventions.

Undoubtedly, the salaried officers with their detailed and intimate knowledge of the affairs of the organization should take part in the deliberations of the executive committee, and perhaps should even cast a vote,<sup>12</sup> but surely they should not predominate on this committee. Nevertheless, the Bricklayers' and Masons' International Union, as at the beginning of its history, permits the president, the first vice-president, and the secretary to render joint judicial decisions and to exercise wide administrative powers, including the authority even to declare strikes. The Printers vest similar authority in the paid official staff composed of the president, the secretary-treasurer, and the two vice-presidents. In the unions of five other trades the officers, exclusive of the vice-presidents, predominate on the board,<sup>13</sup> and in the Coopers and Lace Operatives the board consists of an equal number of salaried officials and non-salaried members. Moreover, even when they receive no salary, the members of the executive board are frequently selected for special service by the president, so that the chief executive has the opportunity to create a coterie of adherents by letting fall the plums to those who favor his policies.

Meetings of the executive committee are held infrequently because of the expense of bringing together its members, who are usually scattered about in various parts of the country. Regular meetings of the board are held by only

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<sup>12</sup> The unions of carpenters and joiners, glass workers, tailors, and window glass cutters and flatteners permit one or more of the paid officials to be present at meetings of the executive board and take part in the deliberations, but to cast no vote.

<sup>13</sup> In the Elastic Goring Weavers the board consists of the president, secretary, and one other; in the Post Office Clerks, it is composed of the president, secretary, treasurer, and one other; and in the Leather Workers on Horse Goods, Pen and Pocket-Knife Grinders, Shipwrights, Joiners, Caulkers and Boat Builders, of three officers and two others.

eighteen of the one hundred and thirty unions,—annually by ten, semi-annually by three, and quarterly by five. In the other organizations the board may be called together in a serious emergency at the discretion of the president or on demand of the members of the local unions.

The executive committee transacts much of its business by mail or telegraph. A few organizations impose fines on members of the board for failure to telegraph their decisions on strike applications within twenty-four hours. Nevertheless, this method of transacting business causes some delay. It likewise handicaps the board in giving intelligent judgments, since its members have no opportunity to discuss with one another the various phases of the problems under consideration. Moreover, the board must depend largely on the paid officers for information concerning questions submitted for its decision, and hence it is limited in its ability to check the absorption of power by such officials.

A few unions have sought a solution of this difficulty by the adoption of the English system of the governing branch. Under this form of government a certain place is chosen as the headquarters of the organization; then the local union or unions at headquarters select certain of their own members to constitute the general board of management. A paid official, known as the secretary or secretary-treasurer, is elected by vote of all the members of the national union. This officer has merely routine secretarial and financial duties. The board meets weekly or oftener, and transacts much business that in other organizations is performed by the salaried officials.

The system of the governing branch is, however, unpopular among the American unions. Only six associations have copied the exact form as it exists in the English societies. Some have experimented with the system and have subsequently abandoned it; a few have adopted it in some modified form. In four unions the members of the board of management are selected from local societies within a radius of one hundred and fifty to three hundred miles

from headquarters. In the Bakers and the Brewery Workmen part of the board are selected by the branches at headquarters, but a majority of them are chosen by convention from local societies in various parts of the country. The quorum living at headquarters meets at least once every two weeks. The matters of business on which it renders an opinion are submitted to the outside members, and the final decision is announced at the following meeting.

The wide territorial jurisdiction of American unions and the great conflict of sectional interests have made the system of the governing branch impracticable. For example, the Carpenters and Joiners, who adopted the system in 1884, abandoned it six years later because the local societies in the various sections of the country refused to be dominated by the members in one city.<sup>14</sup> Nor have the modifications of the system been wholly successful. In those organizations where the members have been selected from local unions within one hundred and fifty to three hundred miles from headquarters the board, while it is less liable to be influenced by local interests, meets less frequently, that is, only once a month. The outside members of the executive board in the United Brewery Workmen are at a disadvantage as regards those at headquarters, and have been called at times the "fifth wheel on the coach" or "the tail of the kite." At times the members of the board who constitute the quorum at headquarters have used their power to further local interests. On one occasion the quorum in the United Brewery Workmen voted to continue the payment of strike benefits to the unemployed members of a local society at headquarters long after the strike was technically over and their places had been filled by the employers. The outside members at last protested, and insisted that the local union at headquarters should be required to support its unemployed from its own funds, as any other local society would have been compelled to do long before.

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<sup>14</sup> Report of the Secretary to Convention, and Constitution as amended in 1884, in *The Carpenter*, August, 1884; see also *The Carpenter*, January, 1891.



The members in each section of the country and in each division of the trade demand representation on the executive board. About twenty associations require that each of the several districts into which their territorial jurisdiction is divided be represented on the executive committee. Each member of the board is then the official head of his district. Canada usually constitutes one of these districts, and a few organizations making no other provision for sectional representation permit the Canadian local unions to have one of their fellow-countrymen on the board. Other national unions provide that no two members of the board must be from the same city or even from the same State or province. Sometimes national unions composed of only a few local societies, such as those of cutting die and cutter makers, sawsmiths, and a few other very small trades, permit each local union to have one member on the executive board. In these small organizations the executive committee sometimes takes the place of the convention. Fourteen unions, four of them included in the twenty that provide for territorial representation, require that the members of the board must be chosen from each of the several branches of the trade. The majority of unions object, however, to the adoption of any iron-clad rule on the ground that it limits them in the choice of efficient men. The officials of such associations declare that an effort is nearly always made to give representation to the different sections of the country and to the various branches of trade.

## CHAPTER XII

### THE INITIATIVE AND THE REFERENDUM

Originally, as has already been noted, the national trade unions elected officers and transacted all other business—executive, legislative and judicial—through the convention of delegates. A number of national unions still continue to vest such unlimited, wide-reaching powers in this representative assembly, but the great majority of them have limited its power to a greater or less extent by the use of the initiative and referendum. The trade unions submit a far wider variety of business to popular vote than do political governments. By this method they elect officers, adopt rules, declare strikes, levy assessments, render judicial decisions, and transact other business. In a few organizations the convention has been abolished, and all questions are determined by the vote of the members.

The right of popular initiative exists in American trade unions only in a modified sense. A member, for example, may propose any amendment to the international constitution at a meeting of his local union, but his proposal must be endorsed by at least a majority of the members in his own branch, must be signed by the local officers, and must have the seal of the subordinate union attached before it can be recognized at headquarters. Then it must be endorsed by the general executive board or by a certain number of other branches before it can be submitted to popular vote. In other words, the local unions, not the members in their individual capacity, have the right to propose legislation. The general executive board has an equal right with the local societies in nearly all cases to submit measures to the referendum. Indeed, in some eight unions the general

executive board alone may exercise this privilege. The subordinate unions have no right of initiative.<sup>1</sup>

The organs of discussion and deliberation are the trade journal, special circulars, and the local mass-meetings. A measure proposed by a local union is stated in the journal or in a circular to each branch; then the question is discussed in the local meetings and perhaps in the columns of the journal. As a rule, the members vote on matters relating to the national organization at a regular meeting of the subordinate union, often without secrecy, in the same way as on purely local measures. Exception is usually made in the election of officers, when all the paraphernalia of the Australian ballot system now so familiar to Americans are used.<sup>2</sup> Ballots are printed by the international union, and an inspector and subinspectors are elected by each local society. On a certain day the polls are kept open, sometimes for six hours. The inspectors count the ballots, and make returns to the general canvassing board, which adds up the votes and announces the result.<sup>3</sup>

The historical development of the referendum in American unions presents a sharp contrast to that of the British unions, as outlined by Sidney and Beatrice Webb. According to them, in the British unions during the early period from 1824 to 1870 the congress of elected representatives "either found no place at all or else was called together only at long intervals and for strictly limited purposes." The supreme authority was the "voices" of all concerned, and to this authority was referred "every proposition not covered by the original articles together with all questions of peace and war." Experience with the referendum soon made

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<sup>1</sup> The general executive board alone has power to initiate legislation in the following unions: Actors, Bookbinders, Ceramic, Mosaic and Encaustic Tile Layers, Elevator Constructors, Hatters, Painters, Decorators and Paper Hangers, Tin Plate Workers, and Theatrical Stage Employees.

<sup>2</sup> The unions are said to have used the Australian ballot system before it was adopted by the state and municipal governments in the United States.

<sup>3</sup> For example, see Constitution of the Cigar Makers' International Union, 1896, fourteenth edition, secs. 11-42.

obvious its disadvantages, and after 1870 there was a reaction. The use of the referendum was limited in a number of unions, the branches being sometimes allowed to submit amendments only once every year or, perhaps, only once in ten years. In a few organizations the system was wholly abolished. "Thus we see," say the Webbs, "that half a century of practical experience with the initiative and referendum has led not to its extension but to an ever stricter limitation of its application."<sup>4</sup>

The experience of the American unions has been exactly the reverse. The American workmen, perhaps because of their political environment, seemed attached to the representative form of government during the early years. They adopted the referendum slowly and apparently with great reluctance. The national associations of printers, hat finishers, iron molders, and iron and steel workers, formed prior to the Civil War, made no attempt for many years to use the initiative and referendum, and some of them have only very recently adopted the system. The one exception was the Stone Cutters, who, in borrowing the constitution of their English fellow-craftsmen, copied among other features of the English societies the method of legislating by popular vote.<sup>5</sup> After 1875 the Iron Molders<sup>6</sup> and the Cigar Makers began experimenting with the referendum. About 1875 the Miners' National Association was submitting amendments adopted by convention to a vote of the local lodges.<sup>7</sup> The Granite Cutters, who copied the constitution of the Stone Cutters, ceased to hold conventions almost immediately after the formation of their national union in 1877, and began to refer all matters to a vote of the members.

By 1880 the idea of transacting business by popular vote had become familiar to American trade unionists. Since that date the system has been adopted by most of the older organizations, and has been copied from them by many of the newer unions. It is now used for a widely varying num-

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<sup>4</sup> Pp. 13-26.

<sup>5</sup> Circular, April, May, 1858.

<sup>6</sup> Constitution, 1876.

<sup>7</sup> National Labor Tribune, October 30, 1874.

ber of purposes by ninety-five out of one hundred and thirty national and international associations. It has also been used occasionally by the Bricklayers and other unions which do not make definite provision for it, in order to pass on measures needing immediate consideration during the period between conventions.<sup>8</sup>

When first introduced, the referendum has usually been employed by an organization for a very restricted number of purposes. As the members have grown accustomed to direct selfgovernment, its use has almost invariably been extended, until in a few national unions the convention has been abolished, and all business is transacted by popular vote. This gradual replacement of the representative by the democratic form of government is well illustrated by the experience of the Cigar Makers' International Union. About 1875, eleven years after the founding of the organization, a rule was adopted permitting local societies to propose constitutional amendments, which after publication and discussion in the journal of the union were submitted to referendum vote. Two years later it was enacted that no measures passed by the convention should go into effect until ratified by a majority of the local societies. In 1879 the policy of submitting application for strike benefits to the subordinate unions was inaugurated. In 1884 the members and the local unions were allowed to appeal from judicial decisions of the executive board to a vote of the membership. Finally, the system of electing officers by popular vote was established in 1891.<sup>9</sup> Conventions, which at first were held annually, were later held only biennially, then triennially, and since 1896 have been wholly discontinued.

The initiative and referendum are most commonly employed to adopt amendments to the constitution. They are so employed by about seventy of the one hundred and thirty

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<sup>8</sup> President's Annual Address, in Proceedings of the Bricklayers' and Masons' International Union, 1876, p. 6; Proceedings, 1877, pp. 13-14, 19, 22; Report of the Secretary, in Proceedings, 1884.

<sup>9</sup> See Constitutions, 1879, 1884, 1891.

national unions studied. Some fifteen organizations,<sup>10</sup> all with one exception<sup>11</sup> included in these seventy unions, provide that all amendments adopted by convention must be referred for ratification to popular vote. The Printing Pressmen require the submission of measures involving an increase of dues, and the Ladies' Garment Workers of all direct proposals to increase dues. Particular measures adopted by convention must be submitted to the members at the request of a fixed number of local societies in the national unions of Letter Carriers and Slate, Tile and Tin Roofers.<sup>12</sup> The Letter Carriers, Brewery Workmen, and Wood Carvers give the convention discretionary power to refer an amendment or resolution to popular vote whenever they deem it expedient. Without such special authorization, the conventions of many other associations pursue this policy whenever they do not desire to assume responsibility for the passage of a certain measure.

Though a few American unions employed the strike referendum at an earlier date than the legislative referendum, applications for strike benefits are now submitted to a vote of the members by only twenty-one organizations, less than one sixth of the national unions studied and less than one third of the number legislating by popular vote. In thirteen of these twenty-one organizations all strike applications are first referred to the executive board; then, if the local union making the application is dissatisfied with the decision of the board, it is referred to a vote of the members. Four unions submit strike applications involving more than a certain number of members to popular vote, and less

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<sup>10</sup> These unions are as follows: Actors, Bridge and Structural Iron Workers, United Brotherhood of Carpenters and Joiners, Carriage and Wagon Workers, Cloth Hat and Cap Makers, Cigar Makers, Garment Workers, Western Federation of Miners, Pattern Makers, Piano, Organ, and Musical Instrument Workers, Shirt, Waist and Laundry Workers, Tailors, Tobacco Workers, and Woodsmen and Saw Mill Workers.

<sup>11</sup> The exception is the Western Federation of Miners.

<sup>12</sup> The Letter Carriers submit measures adopted by convention to popular vote at the request of ten branches, aggregating fifty or more members, and the Slate, Tile and Tin Roofers on demand of two local unions.

important ones to the executive board; but in three of them, dissatisfied local societies may appeal from decisions of the board to popular vote. Four organizations submit all strike applications to the referendum.<sup>13</sup>

In thirty-four unions the general membership constitutes a supreme court to which local unions can appeal from decisions of the general executive board. This right of appeal is accorded only to local societies in nine unions<sup>14</sup> and only to impeached national officers in fourteen others.<sup>15</sup> Eleven organizations permit both local societies and impeached officers to appeal their cases to this popular tribunal.<sup>16</sup> Usually the national executive board is the highest court to which an individual member can refer his case, though in four of the above unions individual members as well as local societies may appeal to the popular vote.<sup>17</sup>

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<sup>13</sup> The following unions permit appeals from decisions of the executive board on strike applications: Actors, Broom and Whisk Makers, Ceramic, Mosaic and Encaustic Tile Layers, Cloth Hat and Cap Makers, Coopers, Garment Workers, Glass Workers, Ladies' Garment Workers, Leather Workers on Horse Goods, Painters, Decorators and Paper Hangers, Shirt, Waist and Laundry Workers, Street and Electric Railway Employees, and Tailors.

The following refer applications involving more than a certain number of members directly to popular vote, and those involving less to the executive board: Cigar Makers, Piano, Organ and Musical Instrument Workers, Tobacco Workers, and Wood Carvers. All except the Wood Carvers permit appeals from the executive board to popular vote.

The following submit all strike applications to the referendum: Blacksmiths, Flint Glass Workers, Marble Workers, and Stone Cutters.

<sup>14</sup> These are the following unions: Actors, Bakers, Blacksmiths, Carriage and Wagon Workers, Electrical Workers, Metal Polishers, Retail Clerks, Steam Engineers, and Tobacco Workers.

<sup>15</sup> These are the following unions: Carpenters, Flint Glass Workers, Interior Freight Handlers and Warehousemen, Iron Molders, Ladies' Garment Workers, Leather Workers, Lithographers, Longshoremen, Pilots, Quarry Workers, Railway Clerks, Sheet Metal Workers (only the general secretary-treasurer may so appeal), Shirt, Waist and Laundry Workers, and Street and Electric Railway Employees.

<sup>16</sup> These are the following unions: Broom and Whisk Makers, Cigar Makers, Glass Workers, Pattern Makers, Paper Box Workers, Painters, Decorators and Paper Hangers, Paving Cutters, Piano, Organ and Musical Instrument Workers, Travellers' Goods and Leather Novelty Workers, Window Glass Cutters and Flatteners, and Woodsmen and Saw Mill Workers.

<sup>17</sup> These are the following unions: Blacksmiths, Pattern Makers, Piano, Organ and Musical Instrument Workers, and Metal Polishers.

The American unions have been slow to adopt the method of electing officers by popular vote. Popular elections were indeed not held save by the Stone Cutters, the Granite Cutters, and perhaps one or two other trades until after 1890. Only eighteen organizations now elect officers by popular vote.<sup>18</sup> Assessments are levied by popular vote by the Barbers, Chain Makers, Glass Bottle Blowers, Lace Operatives, Letter Carriers, Paper Box Workers, and Woodsmen and Saw Mill Workers. Ten organizations permit any question the consideration of which cannot be conveniently postponed to the next convention to be submitted to the members at the request of the executive board or of a specified minimum number of local societies.<sup>19</sup>

The American unions have used the initiative and referendum much less extensively than have the British trade unions. In Great Britain, unions such as the Amalgamated Association of Operative Cotton Spinners and the Miners' Federation of Great Britain, which transact their business solely through a representative body, are notable exceptions. In America at least thirty-five national unions out of about one hundred and thirty do not make use of the referendum. These thirty-five unions are nearly all small and unimportant, however, and most of them have been recently organized. In Great Britain nearly all the unions have abolished the system of holding conventions at regular intervals, and transact all business by vote of the members. In America this extreme policy is pursued by only a few organizations.

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<sup>18</sup> The following unions permit local societies to nominate candidates, and the election is by popular vote: Boiler Makers and Iron Shipbuilders, Boot and Shoe Workers, Brick, Tile and Terra Cotta Workers, Carriage and Wagon Workers, Cigar Makers, Leather Workers on Horse Goods, Lace Operatives, Machinists, Metal Polishers, Metal Mechanics, Metal Workers, Mine Workers, Pattern Makers, Retail Clerks, Printers, Stone Cutters, Tobacco Workers, and Woodsmen and Saw Mill Workers.

In the Brewery Workmen, Carpenters, and Glass Workers, officers are nominated by the convention and elected by popular vote.

<sup>19</sup> These are the following unions: Bakers and Confectionery Workers, Brewery Workmen, Bridge and Structural Iron Workers, Cloth Hat and Cap Makers, Garment Workers, Lithographers, Meat Cutters and Butcher Workmen, Western Federation of Miners, Printers, and Window Glass Workers.



No convention has been called by the Granite Cutters since 1880, three years after the formation of the organization. The Cigar Makers have not held a convention since 1896. The Paving Cutters make no mention of a convention in their constitution and the Stone Cutters refer to it only incidentally. Some five other associations call a convention only when the popular vote has so ordered.<sup>20</sup> Another group submits to the referendum at regular intervals the question: "Shall a convention be held this year?" Sometimes the meeting of the representative body is postponed by vote of the members year after year. But the representative assembly is still convoked periodically in the great majority of American unions, and the initiative and referendum are used chiefly to supplement the work of the delegates during the time when convention is not in session.

Sidney and Beatrice Webb have attributed the adoption of the system of the initiative and referendum by British trade unionists to a dominant desire on purely theoretical or even sentimental grounds for direct government by the members. The British trade unionists, they declare, have possessed the most childlike faith, not only that all men are equal, but also that what concerns all should be decided by all. Like the citizens of Uri or Appenzell, they have been slow to recognize any other authority than the voices of all concerned.<sup>21</sup> In their early local organizations the members strove to transact all business at the general meeting, and grudgingly delegated any functions either to officers or to committees. When such delegation of duties became necessary, they sought by short terms of service and by rotation in office to prevent the assumption of undue power and authority by particular members. After the national associations were formed, the same ideal of democracy soon led to the abandonment of representative conventions, to the

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<sup>20</sup> These unions are as follows: Lace Operatives, Metal Polishers, Pattern Makers, Quarry Workers, and Tobacco Workers.

<sup>21</sup> Pp. 3, 8.

election of permanent salaried officers by popular vote, and to the transaction of all business by means of the initiative and referendum.

The American workmen have not adopted the initiative and referendum because of that innate love of democracy to which Sidney and Beatrice Webb have ascribed the adoption of the referendum by British trade unions. James Bryce, in his *American Commonwealth*, has said, "The Americans have not a theory of the state, have felt no need for one, being content, like the English, to base their constitutional ideas upon law and history." But they have had, he thinks, certain "ground ideas," certain "dogmas and maxims," and chief among these is the political axiom that "the most completely popular government is the best." So it has been with the American trade unionists. Probably at no time in the history of American unions would the members have denied, if asked, the eminent desirability of a more popular form of government, yet they have seldom urged for this reason the adoption of the initiative and referendum. The official journal of the Cigar Makers, during the period when the movement toward a wider use of direct government was in full force, contained no idealization, no discussion even, of the fundamental necessity of allowing the members to govern themselves directly.

In other trades such arguments have been occasionally used. A writer in an early journal of the United Brotherhood of Carpenters and Joiners, in speaking of the referendum, declared: "It gives each member his full voice in the affairs of the Brotherhood. It allows the members to rule and does away with the autocratic power of the delegates; it consults the judgment of every member, and gives us the ripest and best legislation. This principle of general vote is truly democratic in the proper sense of the terms."<sup>22</sup> Another writer in the same journal said: "The initiative and referendum is an excellent means to inform members thoroughly of all the workings of our organization. Any trade

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<sup>22</sup> *The Carpenter*, May, 1883.

which does not recognize this is doomed to destruction. Autocracy is bound to fall before the desire of the people to rule themselves." Yet such statements are rarely made save to supplement and bolster up other weightier arguments in favor of the referendum. Furthermore, when the referendum was originally adopted by some of the older organizations, its form was not truly democratic, since each local union was allowed one vote irrespective of its size. This method of voting was advocated by the small local unions, who were always fearful of being dominated by the large societies. Only after a long struggle were the proposals to cast the vote according to membership crowned with success.

Under such a system a minority of the members can easily outvote the majority. In the early days of the Iron Molders' Union the president, writing in the journal concerning the injustice of this method, declared: "The present law provides that if one third of the unions do not vote in the negative when a strike circular is issued, the strike shall be authorized. This law would be fair if each local had the same number of members; but the fact is that one-third of our unions contain over two-thirds of our members. Almost one-third of the unions may vote against the strike, yet the remaining two-thirds, comprising only one-third of the membership, can authorize a strike and compel the other two-thirds of the members to support it. Thus the minority can rule the majority."<sup>23</sup> Domination by the minority was similarly possible for some years in the Cigar Makers' International Union. In 1883, at a time when each society was allowed one vote on matters submitted to referendum, one hundred and forty-three of the one hundred and sixty-four local unions composing the International Union contained a minority of the membership.<sup>24</sup> In fact, certain apprenticeship rules, grossly unfair to the large local unions,

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<sup>23</sup> International Journal [Iron Molders], March, 1874.

<sup>24</sup> These 143 local societies contained only 6842 of the 14,000 members belonging to the international union. These figures have been compiled from the semiannual financial report contained in the Cigar Makers' Official Journal, December 15, 1882, June, 1883.

were adopted at this time by a majority of small societies containing only about one seventh of the membership.<sup>25</sup>

When the Cigar Makers finally decided that the vote should not be cast by each local society as a unit but by each member "in his individual capacity," so vague was their conception of popular government that some of the subordinate unions failed to grasp the significance of the new rule. Some reported the whole membership as voting in favor even though a bare majority had passed the measure. For example, if a local union had a membership of one hundred and fifty, and one hundred and twenty were present, of whom ninety voted for and thirty against a measure, one hundred and fifty were reported as voting in favor of the measure. The president was forced to explain what was really meant by popular vote.<sup>26</sup>

The experience of the older organizations has been repeated by some of the newer ones. When the Plumbers were considering at the conventions of 1894 and 1896 the advisability of adopting the initiative and referendum, the question was raised whether the vote should be counted according to the number of local unions or the number of members. Alarmed at the possibility of one large union in New York, Chicago, or Boston, with a membership of a thousand, outvoting fifty small ones with an average membership of twenty, the small societies urged that each local union cast only one vote.<sup>27</sup> On the other hand, a delegate from one of the large societies declared: "One man is just as good as another wherever found. If there are a thousand members in Chicago, every one of those thousand members is entitled to an expression of his ideas, just the same as an individual member of the smallest organization."<sup>28</sup>

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<sup>25</sup> This measure could be enforced in the small towns where machinery or division of labor had not been introduced. Its enforcement was impracticable in the large cities where team work and the use of the molding machines commonly prevailed (Cigar Makers' Official Journal, March, 1883).

<sup>26</sup> Cigar Makers' Official Journal, April, 1883.

<sup>27</sup> Proceedings, 1894, in Supplement to United Association Journal, vol. ii, no. 1.

<sup>28</sup> Proceedings, 1896, pp. 26-27, in Supplement to United Association Journal, vol. iii, no. 1.

Illustrations might easily be multiplied, but enough have probably been given to show that there has been little idealization of democratic forms of government by the American trade unionists, that the initiative and referendum were sometimes introduced in a form far from democratic, and were made truly democratic only against great opposition.

Why, then, have the initiative and referendum been adopted by American trade unionists? Primarily they have been employed between the sessions of the convention to transact business which cannot be wisely entrusted to the executive board, yet can be postponed only with grave inconvenience until the next convention. To a minor degree they have been used to limit the power of the representative assembly. The power of convention has been so limited, first, because the difficulty of establishing an adequate system of representation has enabled the convention to pass measures reflecting the opinion of the minority rather than of the majority, and second, because the local unions, fearful lest their independence should be to some extent limited, have been reluctant to entrust wide discretionary powers to the delegates who represent them in the delegate assembly. Some organizations, therefore, require that enactments passed by convention must be submitted to popular vote. Thirdly, the frequent lobbying and the serious factional disputes recurring during elections of officers by convention and the difficulty of establishing an adequate system of representation have led a small group of associations to elect officers by the general membership. Finally, the holding of conventions is a heavy financial burden. As the members have become accustomed to governing themselves directly, to save expense the representative assembly has been convoked less and less frequently, and greater use has been made of the initiative and referendum. Some observation will be offered on each of these four reasons for the use of this instrument of government.

The use of the initiative and referendum to transact between conventions business which may not be safely entrusted to the officers of the executive board admits of easy

explanation. 'As has been pointed out, the attempt of the convention to retain all legislative power has invariably failed, since in unexpected emergencies national officials have not hesitated to violate old rules or adopt new ones. To vest even limited legislative power in an executive board already exercising important executive and judicial functions, as a few unions have done, results in creating during the period between conventions a form of government dangerously akin to bureaucracy. Even if the board is not tempted to abuse its authority, the local unions may refuse to obey its decrees. Always prone to rebel against regulations of the federal union, the local societies will be much more inclined to do so when such restrictions have been imposed by a small board. Opposition to bureaucracy, to bossism, to clique legislation, serves as a good excuse for their disobedience. To avoid such a contingency, sixty-six national unions adopt amendments to the rules during the period between conventions by means of the initiative and referendum.<sup>29</sup> The rules so passed reflect the opinions and interests, not of a few leaders, but of the whole body of members. The mandates issued by this authority no local society can find the slightest excuse for disobeying.

To prevent delay, a few unions permit local societies and members to appeal from decisions of the executive board to popular vote. The usual method of appeal to convention causes a delay of many weeks or months in securing a final decision. Guilty members and local societies are thus able to postpone their well-merited punishment, and innocent parties suffer grave injustice by being deprived for many weeks of the full and impartial hearing that will easily acquit them. On the other hand, the court of popular vote is always in session, and cases are not kept waiting long on its docket.

This method of administering justice is, however, very

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<sup>29</sup> Early in the history of the United Brotherhood of Carpenters and Joiners, when the advantages of adopting legislation between conventions by means of the popular vote was being discussed, one writer said: "Now, if we want an amendment, we have to wait till next convention. Under the system of the initiative and referendum, we can get it any time" (*The Carpenter*, June, 1883).

crude. Each side writes a statement of its case, and this, together with all other possible documentary evidence, is considered by the members at meetings of the local unions. Cross-questioning of witnesses is of course impracticable. Perhaps because of the crudity of the method, judicial decisions are submitted to popular vote by far fewer organizations than those which use the legislative referendum.

Applications of local societies for strike benefits are submitted to popular vote by some unions because of frequent dissatisfaction with decisions of the executive board. The consideration of such applications cannot be postponed until next convention because strikes, to be effective, must be declared immediately. At the same time the local union whose application has been refused is usually much disgruntled, accuses the members of the board of graft and favoritism, and often proceeds to strike without the aid of funds from the national treasury, with disastrous results to itself and indirectly to the federal organization. Occasionally local unions have been so rebellious and so bitterly resentful that the officers or the executive board have asked to be relieved of the very disagreeable duty of sanctioning strikes.<sup>30</sup>

Another argument urged in favor of submitting applications for strike benefits to popular vote is that the members who must be taxed to support a strike should be permitted to say whether or not it should be declared; and it is further argued that if permitted to vote, they will pay the necessary assessments more promptly.<sup>31</sup> Use of the strike referendum delays considerably, however, the declaration of hostilities, and the members display little discrimination in making decisions. Almost invariably applications for financial assistance are granted. Perhaps this is the reason why the

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<sup>30</sup> For example, the president of the Miners' National Association, which was organized in 1873, was vested with power to grant strike benefits. He was so bitterly attacked, however, whenever he refused financial assistance, and found his advice so uniformly disregarded that he urged the submission of applications for benefits to a vote of the members (National Labor Tribune, November 7, 1874).

<sup>31</sup> See The Laster, August 15, 1888, p. 2.



strike referendum has been used to so limited an extent by American trade unions.

While the use of the initiative and referendum between conventions is not designed to restrict the functions of the representative assembly, it does so to a considerable extent. Save in the unions of Coopers and Potters<sup>22</sup> the convention has, indeed, full power to amend or abolish any rule adopted by popular vote, but in practice it would hesitate a long while before changing a rule adopted by an overwhelming vote of the members. When judicial disputes are decided by the general membership, the representative assembly exercises, except in three unions, no judicial power.<sup>23</sup> In addition, applications for strike benefits and various other matters are rarely considered by the convention when an opportunity exists for transacting such business by popular vote.

The second great purpose in the introduction of the initiative and referendum has been to limit the power of the representative assembly. The enactments of the convention are submitted to popular vote by some fifteen associations. This policy has been adopted because of the decentralized character of American trade unions and because of the difficulty of obtaining an adequate system of representation.

In decentralized national unions the constituent local societies do not allow their delegates to exercise discretionary power at meetings of the convention for fear that these delegates, subordinating local to national interests, may permit the undue absorption of functions by the central organization. The delegates are restrained in two ways: Either they must vote according to very specific instructions from

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<sup>22</sup> The Coopers provide that no rule enacted by popular vote within the six months before the assembling of convention can be modified by the delegates. The Potters provide that amendments adopted by a vote of the members shall have precedence over those enacted by convention.

<sup>23</sup> The exceptions are the Bakery and Confectionery Workers and the Steam Engineers, which permit members to appeal either to popular vote or to the next convention, and the Actors, which give members such a choice, and also permit appeals to the convention from the popular vote.



the local unions, or, if allowed to use their own judgment, they must submit all their decisions to a vote of the members.

Efforts of the American trade unions to limit the convention to a specified program have invariably failed. Frequently the best and most feasible plan is not suggested beforehand, but is conceived during the debate on the floor of convention. Frequently, also, concessions must be made by all sides before a measure can be adopted. To be sure, the delegates may postpone the consideration of a measure from one session to the following one, recommending that during the interval its merits and demerits be discussed in the journal and at meetings of the local societies. By this means the delegates are able to come to the next convention fully instructed how to vote. When a scheme is new and unfamiliar, and a preliminary campaign of publicity may be necessary to induce the members to pay the increased dues needed to carry out the plan or to cooperate in other ways for its success, such deferment may be wise; but in many instances such a policy delays unnecessarily the inauguration of imperatively needed reform. Indeed, so seriously is the efficiency of the representative assembly impaired by any effort to restrict its initiatory power that the older national unions such as the Iron Molders<sup>84</sup> and the Cigar Makers<sup>85</sup> soon ceased to limit the delegates to the consideration of measures on which they had been instructed. Only six out of one hundred and thirty national unions try to carry out such a policy at the present day.<sup>86</sup>

Some fifteen national unions attempt to retain control over the delegates by requiring the submission to popular vote<sup>87</sup> of all measures that they adopt. Thus the initiatory

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<sup>84</sup> Proceedings, 1867; Proceedings, 1868.

<sup>85</sup> Cigar Makers' Official Journal, April, 1877; Constitution, 1880.

<sup>86</sup> These are the Electric Workers, Flint Glass Workers, Glass Bottle Blowers, Leather Workers, Locomotive Firemen and Engineers, and Print Cutters.

<sup>87</sup> The Steam, Hot Water, and Power Pipe Fitters and Helpers have adopted a scheme which is a compromise between the method of instructing delegates and the system of submitting to popular vote measures advocated by the delegates. Amendments which have

power of the convention remains unimpaired and at the same time the members have the assurance that the delegates cannot put into force a measure to which the majority is opposed. Moreover, a strong minority is less apt to break into open rebellion against measures adopted by popular vote. As a writer in an early journal of the United Brotherhood of Carpenters and Joiners declared, in terse though inelegant language: "Make your laws in convention and pack them down the throats of the members and they will be ignored. Frame your laws and let the members ratify them as laws and they will be respected."<sup>28</sup>

Another reason for submitting measures adopted by convention to a vote of the members has been the difficulty of securing adequate representation in that body. Frequently only a minority of the local unions send delegates to the federal assembly. Rules promulgated by such a minority will naturally be ignored, and efforts to enforce them may drive some of the local societies to secede. Recognizing this, associations which do not regularly use the referendum do sometimes submit the enactments of a slimly attended convention to popular vote. Because so many local societies failed to send delegates, the Plumbers required for a time that all legislative proposals of the convention must receive popular sanction before becoming effective; and since the abolishment of this fixed rule, poorly attended conventions have voluntarily submitted important measures to vote of the members.<sup>29</sup>

This use of the referendum is less imperatively needed when the expenses of delegates are paid from the national treasury since, under this policy, practically all the local

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been submitted three months prior to the convention and which have been published in the trade journal, and hence upon which the delegates have been instructed by their constituents, become law as soon as ratified by a two-thirds vote of the delegates. Amendments which are initiated on the floor of convention must, if approved by the delegates, be ratified by means of the referendum.

<sup>28</sup> The Carpenter, February, 1884.

<sup>29</sup> Proceedings, 1894, in Supplement to United Association Journal, vol. iii, no. 1; Proceedings, 1896, pp. 26-27, in Supplement to United Association Journal, vol. iii, no. 1; Proceedings, 1899, in Plumbers, Gas and Steam Fitters' Official Journal, September 25, 1899.

societies secure representation. In the Iron Molders' Union about 1882 one group of members was advocating that all expenses of delegates be paid by the national organization. Another group was urging that, without shifting the burden of paying expenses, a more equitable method of legislating be secured by referring all measures adopted by the convention to the general membership. The system of paying delegates from the federal treasury was finally adopted, and the policy of referring the work of convention to popular vote has never been inaugurated.<sup>40</sup> An official of the Journeymen Barbers' National Union declared to the writer that such popular ratification of legislation was not needed in his organization because the expenses of delegates were paid by the national union, and hence the local societies were always fairly well represented in convention. Nevertheless, the Cigar Makers, Pattern Makers, Piano and Organ Makers, and Tobacco Workers, which pay the expenses of delegates from the central treasury, do use the referendum for this purpose, apparently because the local societies fear to trust the delegates with final legislative power.

In all the older national trade unions, officers were elected by convention. During the last ten or fifteen years there has been a decided tendency toward election by popular vote, and such a system exists at the time of writing in perhaps eighteen national unions. The movement toward popular elections has resulted primarily from a desire to avoid the lobbying and wire-pulling which not infrequently characterize the elections of officers in convention. The delegates nearly always split into parties in support of rival candidates, and the fiercely contested factional fights between these parties threaten sometimes to split asunder the organization, and always leave bitterness and ill feeling. "There are," declared a trade-union official to the writer, "always half a dozen men after my job, and they use all kind of wire-pulling in trying to get it." "When officers

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<sup>40</sup> Iron Molders' Journal, May, 1882.

were elected by the convention," confessed the secretary of another union, "I was always forced to have a clique or following of my own among the delegates of that body. Since the system of popular elections has been introduced, it has not been necessary to do so."

The popular election of officers has been introduced in some cases through the efforts of a faction which had been dissatisfied with the success of another faction in dominating the convention. For example, an officer of a certain union was not of the sort that is "popular with the boys." He was a strict disciplinarian, rigidly enforcing the rules. He did not have the hail-fellow-well-met temperament. The group with whom he was unpopular succeeded finally in defeating him and in electing a man of a wholly different type. The defeated official and his friends bent their efforts to secure the inauguration of a system of popular elections. They were successful, and, it is interesting to note, were equally successful in electing their candidate, who has retained his office ever since. In another association where there has been a long struggle between the socialistic and non-socialistic groups the conservatives dominated the convention and held all the offices. The socialists advocated election by popular vote as a possible means of defeating their opponents. The president had been particularly drastic in his efforts to suppress socialism, and its advocates were very anxious to encompass his downfall. At first they proposed that the president should be elected by popular vote and the other officers by convention, but this attack on the president was so apparent that later they proposed the election of all officers by vote of the members. Finally, such an amendment was adopted.

The failure of many local societies to have representation in convention has been another cause tending to bring about popular elections. Naturally the defeated candidate and his followers are very quick to point out that the successful rival has been elected by the representatives of a small minority of the organization. Sometimes, also, pop-

ular elections have resulted from a struggle for supremacy between the large and the small local unions. In the Cigar Makers' International Union the small societies at an early date secured the adoption of a rule to the effect that at elections of officers in convention each subordinate union, irrespective of the size of its delegation, should have only one vote. Since the expenses of delegates were paid by the international union, the small local unions were well represented, and by means of this rule they controlled elections. The large local unions were much dissatisfied, and their influence was added to that of the socialists in favor of electing officers by vote of the members.<sup>41</sup>

The lengthening of the interval between conventions, due to the desire to save the cost of holding such meetings, has caused an increasing use of the initiative and referendum. A few New England associations once held conventions semiannually or even quarterly. At first, the New England Lasters' Association, formed in 1879, called its delegates four times a year. This organization consisted then of only twenty-three local societies, all in Massachusetts, and all embraced within an area not over sixty or seventy miles in circumference. After the territorial jurisdiction had widened to include branches established in Maine and New Hampshire, quarterly conventions were abolished, and the delegates assembled semiannually. Later, as local unions outside of New England were brought into the organization, the expense of holding conventions increased greatly; at the same time, as the framework of government had now taken on fairly definite form, frequent amending of the constitution was less imperatively needed. Since 1890, therefore, conventions have been held annually instead of semiannually.<sup>42</sup> Today only one small organization, the Pen and Pocket Knife Grinders and Finishers' Union, with a juris-

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<sup>41</sup> As early as 1881 the delegate from subordinate union No. 144, in New York City, the largest local society of cigar makers in the country, was advocating the popular election of officers (Proceedings, 1881, in Cigar Makers' Official Journal, October 10, 1881).

<sup>42</sup> The Laster, April 15, 1890.

diction confined practically to New England, holds conventions semiannually. All the other federal organizations convoke the representative assembly not oftener than once a year. Furthermore, as has been pointed out, the convention remains in session a very short time. Every effort is made to rush through business and adjourn within a week or ten days.

To the workman, with his slender income, even short annual conventions, held for only a few days, are a heavy burden of expense.<sup>43</sup> At the convention of 1902 the Iron Molders paid more than \$50,000 for the mileage and per diem allowance of their delegates.<sup>44</sup> The convention of Cigar Makers in 1896 cost \$30,000.<sup>45</sup> On the other hand, save for election of officers, the submission of matters to popular vote costs little. National business can be considered by the members at the regular meetings of the local union. Even the cost of special circulars can be saved by publishing in the official journal the amendments and other measures submitted to the members. Therefore, as the trade unionists have become more and more familiar with the possibilities of the referendum, they have convoked the delegate body less frequently, and they depend more on the method of transacting business by popular vote. At the same time, as the interval between convention widens, more of the small local societies can afford to send delegates. The sessions of the representative assembly are also less apt to be unduly shortened because of the expense, and in consequence measures receive more deliberate consideration than formerly.

Government by convention, however, has several advantages over government by popular vote. One of these advantages is the esprit de corps developed by the personal

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<sup>43</sup> See Report of the President (Proceedings of the International Typographical Union, 1900, p. 72, in Supplement to the Typographical Journal, September, 1900).

<sup>44</sup> Proceedings, 1902, in Supplement to Iron Molders' Journal, September, 1902, p. 769.

<sup>45</sup> Proceedings, 1896, in Cigar Makers' Official Journal, October, 1896, p. 58.

contact of the delegates. To these delegates the federal organization is no longer an abstraction, but becomes real and tangible. The spirit of fraternity is developed. The representative assembly is particularly valuable for this purpose in the early days of a national union. The convention also serves as a liberal education to the officers and members. It acquaints them with trade conditions in various parts of the country,—knowledge invaluable in bargaining with employers. It reveals the harmony and the conflict of interests between the local societies, the need of cooperation, and the need of compromise on all sides to make such cooperation possible. This spirit the delegates carry back and impart to their local union. Then, too, they stand sponsor for the enactments of convention, defend them when they are attacked, and explain away any opposition arising from a misconception of their purpose. Such a spirit of unity and fraternity may be stimulated and such knowledge imparted through the trade-union journal, wherein appear transactions of the national association, reports on trade conditions, and the doings of local unions; but the journal cannot supply the personal exchange of information and opinion.

Systematic formulation of a new constitution or reorganization of an old one by means of the initiative and referendum is impracticable. The organizations which have abandoned the policy of holding conventions or convoke them at long intervals create periodically a small committee which draws up a unified series of amendments and submits them to the members. The constitutional committee at conventions performs the same function, but the advantage of the convention is that it permits a discussion by the delegates from various sections and various branches of the trade. The measure is more apt to be modified to suit the many conflicting interests when initiated by convention than when drawn up by a small committee. The convention is, therefore, especially needed when an organization is young and its constitution is in the formative stage.



In 1879 the Cigar Makers began a thorough reorganization of their whole system of government, and embarked upon various new activities. For several years previous the association had been holding conventions biennially, transacting business during the interval by means of the referendum. Now the union decided to convoke conventions annually, in order to thrash out more thoroughly than was possible by means of the referendum the practicability and the necessary modifications of the newly adopted measures.

In new organizations, for this reason, the delegates are usually called together annually. There are, of course, exceptions, such as the Paving Cutters and the Quarry Workers, who have copied the constitution of the Granite Cutters, and the Tobacco Workers, who have copied that of the Cigar Makers. In imitation of the associations after which they are modeled, all of these recently organized unions hold no conventions. Most of the unions established since the depression of the nineties, however, hold conventions annually, and twenty-five out of thirty-six new unions make no use of the referendum. As national organizations grow older and become better unified, as their fundamental rules begin to take definite form and the machinery of government begins to run smoothly, the work of convention becomes lighter, and much of it is merely routine. When such a stage is reached, the delegates are called together less frequently. At the same time the system of the initiative and referendum is adopted or its use extended in those associations where it has already been introduced.<sup>46</sup>

The initiative and referendum have not been used with complete success by American trade unions, and the experience of the unions with these methods of government has revealed numerous weaknesses. Of these weaknesses some are serious and all are irritating, particularly to trade-union

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<sup>46</sup> Only eight organizations formed prior to 1895 do not use the referendum. One of these is the Bricklayers and Masons. The others are the railway unions, namely, the Maintenance-of-Way Employees, Railway Conductors, Railroad Telegraphers, Switchmen, Railway Trainmen, Locomotive Firemen and Enginemen, and Locomotive Engineers.



leaders, who at times have condemned in rather vigorous language this scheme of popular government.

The experience of the American trade unions reveals six distinct defects in the initiative and referendum as governmental devices:—

(1) The members show lack of discrimination in casting their ballots.

(2) They fail to vote.

(3) They manifest undue activity in submitting constitutional amendments and appealing from judicial decisions to popular vote.

(4) Systematic and thorough revision of the constitution by the initiative and referendum is difficult.

(5) Delay is caused in sanctioning strikes by means of the referendum.

(6) Popular elections of officers are expensive, and give rise to bitter controversies and fraudulent practices.

The most important weakness of the system of direct government has been the lack of discrimination displayed by the trade unionists in casting their ballots. This defect was clearly brought out by the president of the Iron Molders' Union at a recent convention. "While the referendum vote," he declared, "is undoubtedly founded upon correct principles, the result of its use in labor organizations has not always been in harmony with progressive thought. It is an unfortunate fact, but truth compels me to say it, that our members do not give important questions submitted to their decision the careful study and intelligent thought they should, but allow themselves to be swayed by their prejudices or their fears. . . . In my experience with the Iron Molders' Union, and it is the experience of nearly every labor organization, it has devolved upon the higher intelligence of the leaders of our membership in convention assembled to initiate important reforms or take advance ground in our movement."<sup>47</sup>

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<sup>47</sup> "Officers' Report and Proceedings, in Supplement to the Iron Molders' Journal, September, 1902.

The idiosyncracies displayed by the trade unionists in casting their ballots are various. One of the most striking is the tendency to reject all proposals either to increase the monthly dues or to adopt new activities entailing a heavier burden of taxation. In 1890 the convention of Carpenters and Joiners raised the dues of the members only to have the measure promptly defeated when submitted to popular vote.<sup>48</sup> Again, in 1892, proposals of the convention to increase the dues, create a large central strike fund, and establish a system of sick benefits were with equal promptness defeated by the referendum.<sup>49</sup> The Iron Molders, who make no provision for submitting to popular vote the legislation adopted by the representative body, inaugurated the system of high dues with little opposition at the convention of 1895. Speaking of the increase of dues, the president of the Iron Molders declared at the convention of 1902: "Had such a proposition been submitted to referendum vote there is not the slightest doubt that the change would have been overwhelmingly defeated. And yet, even those who in 1895 were loudest in their condemnation, will admit that it was the wisest step ever taken."<sup>50</sup>

Sometimes the members will vote to adopt a new activity, but will fail to provide adequate funds to carry it out. On one occasion, at a convention of the Plumbers, the proposal was made that the question of establishing a sick benefit be referred to popular vote. After some discussion, the delegates decided not to do so for fear that the members would vote to increase the amount of the benefit—fixed by convention for the time being at only one dollar a week—yet would not provide the funds from which to pay it. As a result, the plan would be a total failure, and would probably be permanently abandoned. The tendency of the members to vote in this inconsistent fashion may be illustrated by an incident occurring in the United Brotherhood of Car-

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<sup>48</sup> The Carpenter, December, 1890.

<sup>49</sup> Ibid., March, 1892.

<sup>50</sup> Officers' Reports and Proceedings, in Supplement to the Iron Molders' Journal, September, 1902.

penters and Joiners about 1895. The fund set apart by this organization for the payment of the death benefit had become insufficient because of the high death rate, this in turn being due to the rapid increase in the average age of the members. The convention decided to reduce expenditures by lowering the amount of the benefits, and at the same time to increase the receipts by charging a registration fee of fifty cents to each new member. When the two proposals were submitted to popular vote, both were overwhelmingly defeated. As a result, an assessment of thirty cents had to be levied on each member to meet death claims legally due. Seven hundred dollars had to be borrowed for this purpose from the "protective fund" and twelve thousand dollars from the "organizing fund," thus greatly crippling the power of the union to carry on its belligerent and industrial activities.<sup>51</sup>

On matters of collective bargaining the vote of the general membership is usually quite radical. Very often more is to be gained by compromising with employers than by demanding extreme terms and thus compelling resort to a strike, which may fail completely. If the members are allowed to give their opinion, they often refuse to compromise. The trouble is, as a prominent trade-union official explained to the writer, that a few radical members in each local society can usually prevent the great majority from pursuing a safe and conservative course. The radicals declaim to the effect that the union should not retreat. They denounce those who favor a compromise as cowards or perhaps even as traitors and bribe-takers. By such bluster they try to frighten the conservatives into silence, and if the ballot is not taken secretly may force them to vote against their convictions. "When serving as national organizer," said this official, "I had to speak on several occasions before a local society which my brother officers and myself considered to have pursued a very foolish policy. Often the vote to pursue that policy had been

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<sup>51</sup> Report of the General Secretary, in Proceedings, 1896.

unanimous. But before I had finished speaking, a majority had been won over to my way of thinking. They had not been converted, however, by my eloquence or my logic. Many had believed as I did from the beginning, but they were afraid to say so until they found that a national officer held the same opinion."

The refusal of the rank and file of union members to make concessions to employers was illustrated in the Iron Molders' Union about 1901, when the question of permitting a large number of apprentices to learn the trade was submitted to popular vote. From several causes the industry was developing faster than the increase in the supply of men to perform the work. At various conferences with the officers of the national union the employers in the Stove Founders' Defense Association had demanded some reduction in the ratio of apprentices to journeymen, in order that a larger number of apprentices might learn the trade. The national union officers were willing to make some concession,—in fact, thought that the ratio should be lowered; but the ratio of one apprentice for every eight journeymen had been a provision of the Iron Molders' constitution for many years, and the members were strongly opposed to any change. The proposed ratio of one to five was, therefore, overwhelmingly defeated by a vote of 15,842 to 504; and a second proposal to fix the ratio somewhere between one to five and one to eight met a similar fate by a vote of 12,314 to 3978.<sup>52</sup>

The members use little discrimination in voting on applications of local unions for strike benefits. Some unions never refuse an application, and pride themselves on never having voted against a strike. Other unions vote affirmatively on every strike application until the funds begin to get low or strike assessments begin to bear heavily upon them. Thenceforth they reject every application even though the strikes in question may be much more justifiable than those already sanctioned. The purpose and necessity

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<sup>52</sup> Report of the President, in Officers' Reports and Proceedings, 1902.

of the strike and the conditions favorable or unfavorable to its success are not taken into consideration.

The tendency of the local unions to approve all strike applications without discrimination may at times be exceedingly disastrous. At the beginning of the industrial depression in 1893 a number of local societies in the Bricklayers' and Masons' International Union applied to the central association for strike benefits. The international officers realized that struggles with employers at such a time were doomed to failure and desired to limit the number of strikes sanctioned, but they had no authority to do so. All strike applications had to be submitted to the local unions, and almost invariably they were approved. In fact, the organization was preserved only by a subterfuge. The international executive board prevented the otherwise inevitable approval of all strike applications by refusing to submit many of them to the referendum, on the pretext that the local unions had not followed the proper procedure in making such applications.<sup>53</sup>

The members show a similar lack of discrimination in electing officers by popular vote. The Plumbers abolished the system of popular elections after several years' trial because they thought that officers of greater ability were elected by convention than by vote of the members. They argued that the convention usually contains many of the most able men in the organization, who take a prominent part in the discussion; and when the election of officers takes place, the others naturally turn to them as the men who should be made their leaders. On the other hand, the rank and file have little means of knowing which members possess ability.<sup>54</sup>

Furthermore, it frequently happens that the members follow rather blindly the advice of local leaders in voting for the several candidates for national offices. When the old officers are candidates for reelection, often the whole vote

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<sup>53</sup> Report of the Secretary, in Proceedings, 1894.

<sup>54</sup> Proceedings, in Supplement to United Association Journal, vol. iii, no. 1, p. 28.

of the local society in those subordinate unions where there are a few leading men opposed to the existing administration is opposed to the national officers. In those branches where the leading men are friendly to the administration the vote is favorable.<sup>56</sup>

Popular elections are said also to result in the reelection of the officers in power. There may be other candidates who are much better fitted for the positions, but they are comparatively unknown, or possess only a local popularity. On the other hand, the men already holding office have a decided advantage over the other contestants because their names are familiar to every member in the organization. When on one occasion a local society of tobacco workers was requested to nominate candidates for office, its members replied, "We are very well pleased, indeed, with the present international officers and place them all in nomination for reelection."<sup>58</sup> The other local societies of tobacco workers held much the same opinion, and all the officials were retained in office by large majorities. When in 1904 the Pattern Makers elected their officers by popular vote for the first time, the result was an overwhelming victory for the old officers. The president of the Pattern Makers declared this tendency of the members to reelect the old officers to be a serious defect, and at his suggestion the system of election by convention was restored.<sup>57</sup>

That popular elections in the trade unions tend to prolong the tenure of existing administrations is, however, very difficult to prove. Officers are repeatedly reelected by convention as well as by popular vote, and under both systems often continue in office for many years. Adolph Strasser, former president of the Cigar Makers, was regularly reelected by each succeeding convention from 1879 until his voluntary retirement in 1892. His successor, George Per-

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<sup>56</sup> See discussion in Proceedings of the International Union of the United Brewery Workmen of America, 1896.

<sup>58</sup> The Tobacco Worker, October, 1905.

<sup>57</sup> Report of the President, in Pattern Makers' Journal, August, 1904; Report of the President, in Pattern Makers' Journal, September, 1905.

kins, has since then been regularly reelected each term by popular vote. Nevertheless, an outsider has greater difficulty in unseating the officers in power under the system of popular elections than under the system of election by conventions.

The trade unionists believe that the members can be educated to cast their ballots intelligently. "In a new organization," declared a prominent trade-union official to the writer, "there is little hope that the members will exercise intelligently the power placed in their hands. But there is also little surety that representative government will be more successful at such an early stage. Moreover, the trade unionists, like other people, learn by their mistakes. They can, I believe, be educated to use the ballot intelligently. Experience has already shown that, as a union grows older, the members vote with greater discrimination, and, in general, the system of the referendum proves much more satisfactory." The members are greatly aided in rendering intelligent decisions by the discussions in the journal, which is published by nearly every national union. Like the daily newspaper in the democratic State, the trade paper has become an important mold of public opinion, and under wise and scrupulous management may help the members to display good judgment in casting their ballots.

Another great difficulty which the trade unions have experienced in their use of the referendum is the failure of a large part of the members to vote. Only on very important questions, such as proposed changes in the system of sick or death benefits or a proposed increase of dues, is the vote large; and even then a great number fail to cast their ballots. Very often a subordinate society, engrossed by local affairs, will neglect even to consider at its meetings a matter referred to it by the national union. One delegate reported to the convention of Plumbers in 1896 that the local union of which he was a member had not voted on a single question submitted to it by the national officers during the period since last convention. Such a measure would be

tabled from week to week, and finally its consideration would be postponed indefinitely.<sup>58</sup> On one question referred to the members of the United Association of Journeymen Plumbers at this time, only one hundred and one local societies voted out of about one hundred and ninety. On one occasion early in the history of the Cigar Makers' International Union seventeen local societies voted and thirty failed to return their votes on questions submitted to them.<sup>59</sup>

When a local union does trouble itself to consider a measure referred by the national union, the ballot is frequently cast at a late hour when local business has been disposed of and many of the members have gone home. The result is that often the vote of even those local societies which make returns includes only a small portion of their membership. On one occasion in the Cigar Makers' International Union only about 2700 out of 20,000 members voted on a question submitted to referendum.<sup>60</sup> In the United Brotherhood of Carpenters and Joiners the returns on four measures submitted to the members by the national officers in 1892 were made by 352 locals out of 798, and the total number voting was only 8880 out of a membership of 57,937.<sup>61</sup> Often, therefore, the referendum means the rule of a minority over a majority too indifferent to perform its part in the government of the organization.

When at least a majority or two-thirds vote is required to pass a measure, decisive action is frequently difficult to obtain. For a time the Bricklayers required that all applications for strike benefits must be approved by a two-thirds vote of the local unions, but very often not even a bare majority of the local unions voted on the applications. In consequence, until the system was reformed, no local society could secure an assurance of the financial assistance of the international union.<sup>62</sup> Some national unions provide that

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<sup>58</sup> Proceedings, in Supplement to United Association Journal, vol. iii, no. 1, p. 28.

<sup>59</sup> Cigar Makers' Official Journal, May, 1876.

<sup>60</sup> Ibid., December, 1886.

<sup>61</sup> The Carpenter, March, 1892.

<sup>62</sup> Report of the Secretary, in Proceedings, 1888.



when a local society fails to return the vote of its members, they shall be counted as having voted in the affirmative. It is argued that if a local union were greatly opposed to a particular matter, it would take the trouble to vote. This assumption is not always correct.

Some associations compel members to vote by imposing fines for failure to do so. These unions proceed on the principle which may some day find general acceptance in the democratic State, that the act of voting is a duty as well as a privilege, and that a man who shirks this duty should be punished. The Chain Makers and the Stove Mounters impose fines for failure to vote on any question submitted to referendum. Unions of a few other trades, such as the Bakers, Carriage and Wagon Workers, Cigar Makers, Coopers, and Tobacco Workers, levy such a penalty only when a full vote is considered especially important. The Bakers and the Carriage and Wagon Workers thus impose a fine only for failure to vote at the election of officers, and the Coopers only for failure to make a decision on applications for strike benefits.

At first the members do not use their right of initiative; later they use it too frequently.<sup>63</sup> When the system of direct government has been recently inaugurated and is still unfamiliar, little advantage is taken of the right to initiate legislation. Shortly after its adoption by the Carpenters in 1884, the officers expressed great dissatisfaction because the members, while criticising freely the method of government, made no attempt to rectify defects by submitting amendments to popular vote.<sup>64</sup> Though the Iron Molders adopted the initiative and referendum in 1876, no use was made of them for some years thereafter. About 1884, when the methods of government in this organization greatly needed reforming, the necessary legislation was not passed by

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<sup>63</sup> Sidney and Beatrice Webb have shown the existence of a similar tendency in British trade unions (*Industrial Democracy*, p. 23).

<sup>64</sup> *The Carpenter*, June, 1884. See also *ibid.*, February, 1884.

means of the referendum, but by a convention especially convoked for the purpose.<sup>65</sup>

After the members have grown accustomed to legislating for themselves, the pendulum is apt to swing too far to the other extreme. The constitution is amended too frequently. Unimportant, trivial, even fantastic measures, as well as emergency legislation, are proposed for adoption by the several local unions. It is true that a large number of such proposals are voted down when put to popular vote, but much time is consumed, and the association is subjected to needless expense. Furthermore, many of the more sensible amendments are adopted, and thus the fundamental rules are kept in a continual state of change. At times not even the officers know what is the rule on a certain subject. The result is often administrative chaos.

This irresponsible tendency to submit constitutional amendments was well illustrated at a certain period in the history of the Cigar Makers. After 1879 the referendum was used by the union not only to adopt legislation, but also to sanction strikes and make judicial decisions. Thus the members had ample opportunity to become familiar with the system of direct government, and they soon began to exercise very frequently their right of initiative. Requests to submit constitutional amendments to popular vote poured into the headquarters of the association. Every local society seemed to consider that to propose one or more amendments was an important duty. The secretary of a local union in Omaha wrote to the central office that as the other local unions were proposing amendments, the members of the Omaha society thought that they ought to propose one also, that the rest of the trade might know that the branch in Nebraska was still in existence.<sup>66</sup> The character of these amendments varied widely. On one occasion a local union submitted a series of amendments covering every part of the constitution from the preamble to the last article.<sup>67</sup> Another union proposed to start a cooperative

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<sup>65</sup> Iron Molders' Journal, May, 1884.

<sup>66</sup> Cigar Makers' Official Journal, July, 1883.

<sup>67</sup> Ibid., August, 1887.

shop in towns where the unions had less than fifty members. A third proposed to reduce the per capita tax from sixty to thirty-six cents because there was a surplus of several hundred dollars in the national treasury.<sup>68</sup> Another demanded that the system of paying sick benefits be abolished. This last proposal roused the anger of the president, who was an enthusiastic advocate of the sick benefit scheme, and had secured its adoption after a long and hard struggle. "The regular time to amend the constitution—especially when such an important question is involved—is," he declared, "during the annual convention when everything can be discussed and ventilated."<sup>69</sup> Another local society proposed to raise the president's salary, but that officer again urged that the matter be left to the next convention, where it could be properly discussed. He asked the unions to vote against the measure, and in accordance with his advice it was voted down.<sup>70</sup> Writers in the official journal declared that the frequent amending of the constitution created inextricable confusion. "Not one man in a hundred," they said, "knows what the rule of the association is on any matter. This uncertainty leads to lack of respect for and violation of the law, and is demoralizing to the association."

Because of the mania for proposing legislation, most national unions have limited the initiatory power of the local unions. Usually an amendment proposed by one local society must be endorsed by a certain number of others before it is submitted to popular vote. In the Cigar Makers' International Union a measure had to be seconded at first by four and later by ten local unions before it could be brought to referendum vote. The consent of twenty branches is now required.<sup>71</sup> The number of necessary endorsements at the present time varies widely in different unions. In some, only ten are needed; in others, a proposition must be seconded by one third of the local unions before it is submitted to the general membership. In some

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<sup>68</sup> Cigar Makers' Official Journal, March, 1883.

<sup>69</sup> Ibid., June, 1881.

<sup>70</sup> Ibid., May, 1883.

<sup>71</sup> Constitution, 1882; Constitution, 1884.

associations measures proposed by the local societies must be approved by the general executive board before being submitted to the referendum. The Carpenters and Joiners and the Meat Cutters and Butcher Workmen require the endorsement either of the general executive board or of a specified number of other branches. Some eight associations give the subordinate unions no right of initiative, and permit only the national executive board to submit amendments to popular vote.

The right of appeal to popular vote from judicial decisions of the national executive board is frequently abused, and local unions make such appeals when they have not one valid argument with which to support their case. These appeals consume time and also occasion considerable trouble and expense to the organization, and a few associations restrict the right of the subordinate unions to make them. The Carriage and Wagon Workers provide that an appeal from judicial decisions to referendum vote can be taken only when two local societies in different cities demand it. The Machinists and the Railway Clerks require that the plea of a local union for justice must be endorsed by twenty-five other societies before it may be brought to a popular vote. The Metal Polishers provide that the members or the local unions wishing to appeal to a vote of the members must make a deposit of fifteen dollars. This sum is forfeited if the members decide against them. The Painters, Decorators, and Paper Hangers allow a local union to appeal to popular vote only at its own expense.

A thorough and systematic revision of the constitution and by-laws by means of the initiative and referendum is difficult. We have shown that even under the system of representative government, to bring order out of legislative chaos the convention had to refer all amendments for revision and systemization to a small constitutional committee. Amendments desired by the local unions can be revised and systematized in similar fashion by a popularly elected committee, and several associations have engrafted such a legislative committee upon the system of direct government.

The Granite Cutters, who have ceased to hold conventions, revise the constitution at intervals by means of a committee of seven, which is elected by a plurality vote of the members. This committee considers amendments proposed by the local societies, selects those which it deems desirable, and presents all laws for ratification or rejection by vote of the members. The Tailors, who hold conventions at irregular and infrequent intervals, also elect such a committee to revise the constitution.

However clear, definite, and harmonious may be a series of amendments as originally drawn up by convention or by a legislative committee, they are often ambiguous and conflicting in the form finally adopted by the members. It frequently happens that while a section requiring the organization to undertake a certain activity is adopted, another section necessary for the efficient administration of the activity fails to pass. The president of the United Brotherhood of Carpenters and Joiners said on one occasion: "My observation has been that very often a measure adopted by the delegates in convention who discuss carefully each section of the proposed rules is definite and clear. But upon being passed by a general vote of our members it is usually as clear as mud—often conflicting, always indefinite, scarcely ever interpreted alike by any two members."<sup>72</sup> He proposed as a remedy that only general questions—as, for example, whether such and such a policy or such and such a benefit be adopted—should be submitted to a simple yea and nay vote of the members. The detailed rules necessary to carry out the proposal could, he thought, be drawn up by convention. Such a plan has not been adopted by the international unions.

A serious objection to the use of the strike referendum is the long delay before the vote can be counted and the decision announced. When strike applications are submitted to the general executive board, a reply can be sent back by use of the telegraph, sometimes within twenty-four hours. When submitted to referendum, often several weeks

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<sup>72</sup> Report of the President, in Proceedings, 1898, p. 8.

or a month passes before all of the local unions can hold meetings and the result of the vote be sent in to headquarters. In industries where conditions change rapidly the slow working of the machinery of the referendum is especially serious. In the building trades a strike, to be effective, must be declared without delay. If the question is submitted to the referendum, the work may be finished before the strike is declared. Moreover, in many industries the periods of activity and depression alternate rapidly, often according to the season of the year, and a strike is therefore more likely to succeed at one time than at another. If the inauguration of the strike is much delayed by use of the referendum, the propitious time may have passed.

Another fact to be noted is that the delay in declaring the strike gives the employer an opportunity to learn that such a movement is in contemplation. This objection, however, is not considered serious. Then, too, in most industries conditions are more or less static during the short interval required to submit a strike application to the referendum. Indeed, some labor leaders contend that the delay is advantageous. The local society has time for calm consideration, and thus may be led to adjust its grievance peacefully, or, if the matter is a petty one, may on second thought decide not to declare a strike. It is also true that by rigidly enforced administrative rules the time required to return the vote to headquarters may be considerably shortened. The Cigar Makers, who have used the strike referendum for nearly thirty years, require the vote, under penalty of a fine, to be returned within one week from the day on which the strike circular was mailed. Local societies situated more than six hundred miles from the central office are allowed to return their vote by telegraph at the expense of the international union.

The strike referendum is not, however, very popular, certainly not so popular as the legislative referendum. Though one of the earliest forms of direct government to be adopted by American unions, it is used by some twenty organizations

at the present day, as compared with more than seventy unions which submit constitutional amendments to popular vote.

The election of trade-union officers by popular vote has several drawbacks which have deterred some organizations from adopting the system. The most serious objection is the expense, which is always greater, sometimes very much greater, than the cost of maintaining the convention during the short time required by that body to elect officers. The first popular elections held by the Cigar Makers' International Union in 1892 cost the association about \$15,000. The rules of this union provided that a candidate, to be elected, must receive a majority of the votes cast. Because of this provision, four ballots had to be taken, and in consequence the expense was quadrupled.<sup>73</sup> This rule was later modified by the provision that on the second ballot all candidates should be dropped save the two receiving the highest number of votes. By this means, not more than two ballots ever had to be cast, and thus the expense was reduced at the second election to \$5029. Although it has been still further reduced on subsequent occasions,<sup>74</sup> the cost of popular elections is still considerably greater than that of election by convention.

Parties or factions are found in the trade union, and, as in the democratic state, the struggle of these factions to place their candidates in office subjects the system of popular elections to grave abuses. It is true that parties are often created in the trade union from honest and not unhealthy differences of opinion. For example, there is likely to be a radical progressive faction favoring high dues and a national system of benefits, and a conservative or reactionary party which favors low dues and a restriction of national union activities. The Boot and Shoe Workers' Union for several years has been divided into two warring camps over the question of the union label. The faction in power has advocated the policy of using the label, not to

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<sup>73</sup> Report of the President, in Proceedings, 1893.

<sup>74</sup> Report of the President, in Proceedings, 1896.

secure an immediate increase of wages, but to increase the membership as quickly as possible, and so ultimately build up a strong organization. In order to secure the union stamp, the manufacturer is therefore only required to employ union workers. He may pay the same rate of wages as before. He is also partly protected by the arbitration clause in his label contract from frequent strikes on the part of his employees. On these terms many manufacturers are willing to use the label, and thus a number of workers in previously non-union factories have been forced into the organization. The members of the other faction consider this policy dilatory and vacillating. They think that in return for the use of the union stamp the employer should be required to raise the wages of his workmen. They dislike, also, the policy of arbitration, and favor the older and more belligerent method of the strike.<sup>75</sup> Factions or parties within the union frequently do not arise from disputes as to policy but merely from the ambitions of the leaders. One of the commonest forms of party struggle in the trade union is the contest between the administration officials who try to retain their offices and rival leaders who endeavor to secure their places.

From whatever cause such parties may arise, their existence is not infrequently harmful. Sometimes both sides resort to abusive language, and the whole union becomes thoroughly disorganized. Sometimes, also, the factions resort to ballot-stuffing and other fraudulent methods.<sup>76</sup> In

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<sup>75</sup> Report of the President, in the *Shoe Workers' Journal*, July, 1907.

<sup>76</sup> The general secretary-treasurer in his report to the eighth convention of the Boot and Shoe Workers' Union in 1907 gave the following six possibilities of fraud in elections by popular vote (*Shoe Workers' Journal*, September, 1907, p. 35):—

“First: Only a small percentage of members vote, falling far short of a popular expression and leaving vast opportunity for fraud.

Second: Those who do not vote may be voted by the local inspectors.

Third: The ballots of those who do vote may be changed by the local inspectors.

Fourth: Unions may be disqualified for technical and unintentional errors or omissions.

Fifth: Unions may be disqualified by persons committing fraud purposely to disqualify the union.

Sixth: The general inspector of election may be influenced.”



a recent popular election in the Boot and Shoe Workers' Union charges of fraud were made by the old officers, who were defeated candidates for election. The national executive board called for a reelection. One faction, denying the authority of the board to require this, carried the controversy into the courts, which declared that the executive board of the national trade union had legal power to take such action. The matter was finally settled by calling a special convention, where the controversy was thrashed out, and where the old officers were again chosen. Several years ago a similar instance occurred in the Glass Workers' Association. At a popular election, held about 1896, the candidate of one faction in that organization was declared elected. The other faction demanded that the ballots be recounted, and on the recount its candidate was declared successful. The case was carried into the courts, which decided that the first candidate had been elected; but, in spite of this decision, the controversy raged with much bitterness for some time.

Notwithstanding these various objections to the initiative and referendum, the trade unionists are continuing to use this system of direct government for an ever increasing number of purposes, and have also become enthusiastic advocates of its adoption by state and municipal governments. To inaugurate the system of direct legislation in American States and municipalities, various elements such as the Grangers, the reform leagues, and the socialists have lent their aid; but the group of men who have probably been most active in this agitation are the trade unionists. Their attitude is not difficult to explain. In the first place, they have found that the defects of the referendum are not irremediable, and that these defects do not outweigh its obviously great advantages. After more than forty years of experience with the referendum, therefore, they are still very strongly in favor of that system of government. At the same time, they are hostile to the representative form of government because, as they would express it, the pro-

fessional representatives betray the interests of the laborers and become tools of the capitalist class.

The attitude of the unions may be illustrated by a quotation from the United Mine Workers' Journal. In 1905 the miners of District 2, Pennsylvania, and the Pennsylvania Federation of Labor adopted resolutions in favor of the initiative and referendum. Speaking of these resolutions, the journal said: "It is . . . the beginning of a movement to restore sovereignty to the people which has been insidiously but surely wrested from them until now the people are but voting machines to register the will of political bosses, composed chiefly of corporation agents. The flagrant defiance of the will and demands of the people is not even apologized for, nor is any explanation given and those chosen as servants have, by the gross usurpation, become the masters. . . . Next year, will come a golden opportunity to the grangers and trade unionists of Pennsylvania. A governor and legislature are to be elected. Now is the time to begin preparations for the coming battle to restore to the people their rightful power to rule themselves. . . . The Journal will from time to time, attempt to arouse those who permitted this degrading state of affairs to flourish to their rights, powers and duties as American citizens."<sup>77</sup>

In the above quotation reference was made to the possibility of cooperation between the Grangers and the trade unionists. In the struggle for direct legislation the trade unions have sometimes joined hands with the Grangers; and when such a combination has taken place, success has usually followed. The trade unionists, aided by the farmers, secured the adoption of both the initiative and the referendum in Montana, and compelled the adoption of an advisory initiative and referendum in Texas.

The American Federation of Labor stands pledged by resolution of several conventions to the inauguration of the system of direct legislation, and state and city federations in various parts of the country have worked energetically

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<sup>77</sup> United Mine Workers' Journal, May 25, 1905.

for its adoption. Of these struggles the campaign which has been carried on by the labor unions of Massachusetts for the adoption of the initiative and referendum in that State is more or less typical. This movement was started in Boston about 1900 by the Boston Central Labor Union. Thence it spread to other parts of the State. Finally, in 1903, six hundred and seventy-four unions petitioned the legislature to submit to the people an amendment embodying the initiative and referendum. Numerous secretaries of local trade unions and labor federations wrote to their representatives, and committees from various organizations waited upon members of the legislature, urging them to support the measure. While the bill secured a majority vote, it failed to poll the necessary two-thirds vote. But the count stood 120 to 82, and the unions, in no wise discouraged, have continued the agitation.<sup>78</sup>

The method of questioning candidates in order to secure laws favorable to the workman, which has been employed by the American Federation of Labor since 1901, has also been successfully used by it in the fight for direct legislation by the people. Candidates for election to the State legislature have been questioned, and under the threat of defeat have pledged themselves to vote, if elected, for an amendment embodying the principles of the initiative and referendum.<sup>79</sup> This method of sounding candidates made possible the adoption of direct legislation in Montana, and caused the legislatures of Missouri and Delaware to submit to a vote of the people the question of introducing the initiative and referendum. In Toronto, Canada, and various cities in the United States the adoption of the system of direct legislation has resulted primarily from the questioning of candidates by organized labor. Largely as a result of this agitation, the movement in the various American States and municipalities toward direct legislation by the people has made rapid progress.

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<sup>78</sup> Shoe Workers' Journal, May, June, 1903.

<sup>79</sup> American Federationist, December, 1903, pp. 1292-1293.



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**THE FREE NEGRO IN VIRGINIA**  
**1619-1865**



SERIES XXXI

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**IN**  
**HISTORICAL AND POLITICAL SCIENCE**

**Under the Direction of the**  
**Departments of History, Political Economy, and**  
**Political Science**

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**THE FREE NEGRO IN VIRGINIA**  
**1619-1865**

**BY**

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## PREFACE

The history of the free negro in the slave States forms one of the most interesting chapters in the history of slavery in this country. A number of valuable monographs dealing with the history of the negro or with the institution of slavery in the various States have been published during recent years, but no one of them, so far as the author is aware, has been devoted exclusively to the status or history of the antebellum free negro in a particular Commonwealth of the Union. Such studies are needed, and it is hoped that the present monograph will, as far as Virginia is concerned, supply this need. Moreover, as a study of the free negro in the State in which the African first made his appearance in America, it should supply some of the facts upon which the history of the negro race in the United States must be based. Upon the constitutional side it is hoped that the study will be an aid to a correct conception of the purposes sought to be realized by the adoption of the Fourteenth Amendment.

The author takes this opportunity to acknowledge his indebtedness to Professor W. W. Willoughby for the scholarly guidance and stimulating criticism which were at his service in all stages of the work. It is a pleasure also to acknowledge his obligation to Professor J. C. Ballagh, at whose suggestion the study was undertaken. In the important work of discovery and valuation of the sources Professor Ballagh's generous direction was of particular value. The author is also indebted to Professors J. M. Vincent and G. E. Barnett for helpful suggestions.

Acknowledgment of special obligation is likewise due to Professor Charles Henry Ambler, of Randolph-Macon College, who placed in the author's hands notes of great value which he had made upon the subject of this monograph. For courtesies extended by officials in charge of county and

state archives, sincere thanks are here given. From the discussion of various phases of the subject with Dr. H. J. Eckenrode, archivist, and Mr. Earl G. Swem, assistant librarian, of the Virginia State Library, suggestions of great value were received. Mr. William G. Stanard, librarian of the Virginia Historical Society, courteously placed at the author's disposal valuable manuscripts.

J. H. R.



# THE FREE NEGRO IN VIRGINIA 1619-1865

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## CHAPTER I

### NUMBER AND DISTRIBUTION OF THE FREE NEGROES IN VIRGINIA

At the beginning of the Civil War there were in Virginia nearly sixty thousand free negroes.<sup>1</sup> This number was far in excess of the number of free colored persons in any other of the great slave States, being about double the number in North Carolina, the State which, south of Virginia, had the largest free colored population. It was in excess of the free negro population in any State, slave or free, with the exception of Maryland. In 1860 the entire number of negroes in New York and New England combined was but little greater than the number of free negroes in Virginia. According to every Federal enumeration from 1790, the aggregate negro population of the State of Pennsylvania was smaller than the free colored population of Virginia, and from 1830 to 1860 the same may be said of New York. At the beginning of the nineteenth century the sum of the free negro populations in New York, New Jersey, and Pennsylvania was only about a thousand more than the number of free negroes in Virginia.<sup>2</sup> Of the free negro population of the United States, Virginia had about one eighth.<sup>3</sup>

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<sup>1</sup> Except where specific reference is made in footnotes to the sources, the statistical facts in this chapter are based on the United States decennial censuses, 1790-1860.

<sup>2</sup> St. G. Tucker, *A Dissertation on Slavery*, p. 70 n.

<sup>3</sup> It must be kept in mind that free mulattoes and all other free persons having negro blood are included in the use of the word "free negroes." The term includes the persons enumerated in the census reports under the caption, "all other [than white] free persons except Indians not taxed." In 1771 the general court ruled that negro or mulatto servants and apprentices were to be considered free negroes. It is in this broadened sense that the word is used in this work when used without qualifying words (*Howell v. Netherland*, *Jefferson's Reports*, 90).

The condition which made the free negro question in Virginia unique and peculiarly interesting was that in that State only was there so large a free colored population living in a society so vitally connected with and dependent upon slavery. It requires but little imagination to see why a free negro population, numbering from twenty to sixty thousand between 1800 and 1860 and living among a slave population almost as numerous as the dominant white element, created social problems more perplexing than those of New England, where the negroes, few in number, were almost all free, and race problems different from those of other great slave States where the free negroes were too few to constitute a conspicuous factor in the social order. With society in a large area of Virginia composed of about an equal number of masters and slaves, an additional element of free negroes in the proportion of one to about eight slaves acted in no sense as an aid to facilitating the association of the two races.

Prior to a law of 1782 which removed the restrictions upon the right to manumit slaves by will, the number of free negroes relative to the number of slaves or white persons was very much smaller than in any decade after the passage of that act. From 1619 to the end of the century, when custom and the law were fixing the status of the Virginia negro, no satisfactory statistical estimate can be made of the number of free negroes in the colony. In 1670 Governor Berkeley estimated the total number of "black slaves" in the colony at two thousand.<sup>4</sup> Although he made no reference to any free negroes, there is ample evidence to show that there were some in the colony at this time. In 1691 and 1723 laws were enacted which limited the increase of the free negro class to natural means and to manumissions by special legislative acts.<sup>5</sup> These limitations upon manumission remained in force till 1782, when, according to the reliable statement of a contemporary, the free negro class numbered about twenty-eight hundred. Supposing the

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<sup>4</sup> W. W. Hening, *Statutes at Large of Virginia*, vol. ii, p. 515.

<sup>5</sup> *Ibid.*, vol. iii, pp. 87, 88; vol. iv, p. 132.

ninety-one years between 1691 and 1782 to be sufficient time for the numbers of the free negroes to have doubled three times by natural increase, we may judge, by counting backward on the basis of Tucker's estimate in 1782, that in 1691 the number of free negroes in the colony was about three hundred and fifty.<sup>6</sup>

The frequency with which this class of persons is mentioned in church and court records between 1690 and 1782 gives a further appearance of reliability to the above estimate. In 1724 the reports of certain Virginia clergymen to the English bishop mention free negroes among the parishioners, while certain others show that there were none. The report for St. Anne's parish asserted that in the parish there "are many negro slaves," and that "there may be 6 free negroes."<sup>7</sup> The rector of Lawn's Creek parish reported that "there are some Indians, bond and free, and some negroes, bond and free."<sup>8</sup> The answer for Newport parish of Isle of Wight County is, "Both bond and free,"<sup>9</sup> and for Hungar's parish on the Eastern Shore, "There are Infidels, bond and free."<sup>10</sup> The old parish registers, some of which

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<sup>6</sup> St. G. Tucker, *A Dissertation on Slavery in Virginia*, published as Appendix to 1803 edition of Tucker's *Blackstone*, vol. i, note H, p. 66. The edition of the *Dissertation on Slavery* published in 1796 has 1800 (p. 70) where the later edition has 2800 as representing the author's estimate of the number of free colored persons in Virginia. An indication that the figures of the later edition are the author's true estimate is contained in a statement made by a member of the House of Delegates in discussing manumission in which he cited Tucker as authority for the statement that in 1782 there were 3000 free negroes in Virginia. Evidently the speaker adopted 3000 as a round number for 2800 as given in the edition of Tucker, then only two years old.

<sup>7</sup> W. S. Perry, ed., *Papers relating to the History of the Church in Virginia, 1650-1776*, p. 315.

<sup>8</sup> *Ibid.*, p. 289.

<sup>9</sup> *Ibid.*, p. 274.

<sup>10</sup> *Ibid.*, p. 273. The word "infidels" in these reports is used somewhat in the sense of "heathen," so that when the answer is made that there are "no infidels that are free," as was made for St. Peter's parish (p. 269), it must be understood to mean that there were no free negroes in the congregation of the minister making the report. One negative answer made to the question as to the number of bond or free infidels declared, "There are none of the latter, especially of those who profess the Church of England worship" (p. 271). Negroes, whether baptized or not, were uniformly reported as infidels.

date back to 1662, bear witness to the existence of a free negro element in the congregations, although it is difficult to ascertain from this source the numerical strength of the free negro population.<sup>11</sup> The register of the old Bruton parish shows that thirty-seven out of eleven hundred and twenty-two colored persons baptized between 1746 and 1797 were free;<sup>12</sup> but the ratio of 37 to 1122, or 1 to 30, is no doubt much too large to show the relative number of free negroes to the slaves in any large section of the State. From about 1762 to 1782 some seventy free colored persons are mentioned in the records of baptisms,—a number larger than could have been found in most areas of the same size included in a single parish.<sup>13</sup>

After 1782 the relative numbers of the three classes of Virginia population are pretty well known. A state census made in 1782,<sup>14</sup> although not classifying free negroes separately, bears out the estimate made by Professor Tucker that twenty-eight hundred<sup>15</sup> would represent fairly accurately the number of free negroes in Virginia at that date. The unparalleled increase of this class, which followed the removal in 1782 of the restrictions on manumission, and also the relative numbers of free colored persons, slaves, and whites in Virginia from 1790 to 1860 will be seen from

<sup>11</sup> By the courtesy of the librarian of the Episcopal Theological Seminary at Alexandria, Virginia, the writer was permitted to examine the manuscript parish records, which contain valuable information not only as to the number of free negroes, but also as to their social position.

<sup>12</sup> Manuscript copy, Williamsburg, Virginia, pp. 24-57. See also W. A. R. Goodwin, *Historical Sketch of Bruton Church*, p. 153.

<sup>13</sup> The record for a single year reads, with reference to free negroes, as follows: "John, son of Thos. & Sally Pow, a free mulatto was baptized April ye 4. 1762." "Elizabeth, Daughter of Eliza Wallace (a free negro) baptiz'd June ye 6, 1762." "Joseph, Son of Anne Freeman, a free Mulatto, bapt'z'd July ye 4, 1762."

In further illustration of the evidence contained in parish records of the existence of free negroes in the colony is the following entry: "Diego, free negro died Sept. 3, 1741" (MS. Register of Christ's Church, Middlesex County, p. 310).

<sup>14</sup> "State Enumeration of Va., 1782-1785—Heads of Families," published with the First Census of the United States, 1790.

<sup>15</sup> St. G. Tucker, *A Dissertation on Slavery*, ed. 1803, p. 66.

the following table prepared from the Federal decennial censuses:—

	1790	1820	1840	1860
Free colored.....	12,866	36,875	49,841	58,042
Slave.....	292,627	425,148	448,988	490,865
White .....	442,117	603,381	740,968	1,047,299
Total.....	747,610	1,065,404	1,239,797	1,596,206

From these figures one fails to get a correct conception of the significance of the presence of the free colored population in Virginia unless the question of distribution is also taken into consideration. Had the free blacks been equally distributed throughout the white population of the State, the effect would have been different. In the mountainous half of the State, which after 1830 contained half of the white population, free negroes were so scarce as to be an almost negligible social factor. The 58,042 free negroes, together with the slave population, were confined largely to the eastern half of the State, where in 1860 the white population numbered about 600,000.

The State of Virginia was divided north and south on the basis of the elevation of land into four sections: Tidewater, Piedmont, the Valley, and Trans-Alleghany. Of the 12,866 free negroes in Virginia in 1790 only 75 resided in Trans-Alleghany, or what is now West Virginia with several counties of the southwestern part of Virginia. In the Valley district there were 815; in the Piedmont region, 3640, leaving 8330, or about two thirds of the entire number, in Tidewater. In that section the first census recorded 1 free negro to 18 slaves and to 18 white persons. In Trans-Alleghany the figures showed 1 free negro to 30 slaves to 517 white persons.

From the census of 1860 it appeared that the free negroes of Tidewater were between one sixth and one seventh of the colored and about one fourteenth of the entire population of that section. Tidewater contained 32,841 free ne-

groes, over one half of the entire free colored population, while the region beyond the Alleghanies now had 2513, which was about one eleventh of the blacks of that section and 1 to every 160 persons living there. It appears that Tidewater always had from one half to two thirds of the entire free negro class, although after 1830 that section contained less than one fourth of the white people of the State. In 1860 Trans-Alleghany had more than one third of the white population of Virginia and about one twenty-fifth of the free negroes. The two sections west of the Blue Ridge, sometimes called the western half of the State, had in 1860 over one half of the white and but one seventh of the entire free colored class. A few of the lower counties in the Valley contained a large part of the 8354 free colored persons who lived in the western half. Thus it is apparent that an important aspect of the free negro problem in Virginia was the fact that the free negro population was largely concentrated in the eastern half of the State and came in contact with only about one half of the white population.

With respect to the relative numbers of free negroes in smaller localities some interesting observations may be made. As between rural and urban communities the latter had the larger share of free negroes. In 1790, when the average ratio of free negroes to slaves and to whites in the Tidewater section was 1 to 18, in Petersburg the free negroes constituted one fourth of the colored population of the town, and were to the whites as 1 to 41. In this town of 3000 people there were 310 free negroes. In Richmond, out of a population of 3700 there were 265 free negroes. In Portsmouth, where 1702 persons lived, there were 47 free blacks.

The increase of free negroes in the town populations is best seen by considering the figures of some of the later censuses. Petersburg in 1830 had 2032 free negroes, 2850 slaves, and 3440 white persons. In 1860 this town was the home of 3164 free negroes, 5680 slaves, and a number of

white persons about equal to the total black population. In 1860 Winchester, a town of 3000 white inhabitants, had 675 free negroes, only nineteen less than half of the blacks of the town. In 1850, 10,450 free negroes out of a total of 54,333, that is, nearly one fifth, lived in towns, while only about one tenth of the white population lived in cities and towns. In 1860 between a fourth and a third of the whole free colored population lived in towns and cities.<sup>16</sup>

In some counties a large proportion of the black inhabitants were free. In Accomac County 3392 of the 8000 black inhabitants were free. In James City County 926 out of 2764 blacks were free. In Nansemond County there were 2470 free negroes and 581 slaves. Other counties in Tidewater in which from one sixth to one half of the colored population was free were Charles City, Fairfax, Henrico, Isle of Wight, James City, Norfolk, Northampton, Prince William, Richmond, Southampton, Warwick, and Westmoreland. The counties in Piedmont which had the largest free colored population relative to the slave class were Loudoun and Goochland. In the former, one sixth of the negroes were free, in the latter, one ninth.

Occasion may arise for calling attention to other facts relative to the numbers and the distribution of the free negroes in Virginia, but the facts given above will be sufficient for a general conception of the numerical importance of that class at different times and in different places.

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<sup>16</sup> Census of 1860, Population, p. 516.

## CHAPTER II

### THE ORIGIN OF THE FREE NEGRO CLASS

The popular misconception of the beginnings of the free negro population in Virginia which this chapter should correct may be stated as follows: The first negroes brought to Virginia in 1619 were from the very outset regarded and held as slaves for life. They and all Africans who came after them experienced immediately upon entering Virginia a perpetual loss of liberty. Unlike the white servant, whose freedom was only temporarily withheld, the freedom of the negro could only be restored by an act of emancipation. This being so, the free negro class was nothing but a divergence from, or a by-product of, slavery, dependent in its origin and existence upon the disintegration of slavery. This erroneous view was expressed by a slavery apologist of the decade immediately preceding the Civil War as follows: "Every negro in this country, or his ancestors, came in as a slave. Every negro, legally free, has reached that condition by his ancestors or himself having been emancipated by a former master."<sup>1</sup>

This popular error is maintained and supported by a large number of writers who have discussed the introduction of negroes into America. Besides Virginia historians such as Burk, Campbell, and Cook, who through thoughtless inference have written the word "slave" where they should, in view of all the evidence before them, have written "negro," there are two classes of writers who have given credence to the theory as a means of supporting some cause of which they were the champions. The first authorities to make use of this historical error were the antebellum

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<sup>1</sup> "Calx," Two Great Evils of Virginia. Bound in "Political Pamphlets," vol. xii, p. 5, in Virginia State Library.



proslavery advocates. Judge Tucker of the Virginia supreme court, when delivering an opinion in 1806 in support of the principle of presuming slavery from color, made the following assertion: "From the first settlement of the colony of Virginia to the year 1778, all negroes, Moors, and mulattoes . . . brought into this country by sea, or land, were slaves."<sup>2</sup> The school of proslavery writers in Virginia between 1832 and 1860 made this assumption the basis of an argument for the reduction of all free negroes to slavery: "Every negro in this country or his ancestors came in as a slave." Hence they argued that "the free condition of all negroes in this country is novel or superinduced, artificial and abnormal. The great political problem which is required to be solved, is the recovery of the free negroes from their false position in this slave-holding community."<sup>3</sup>

The other writers whose conclusions have been influenced by their wishes in regard to the early history of the negro in America are historians of sectional bias who desire to assure themselves and their readers that American slavery had its origin in Virginia and not at the North. Thus, Henry Wilson, in his *Rise and Fall of the Slave Power in America*,<sup>4</sup> assures us that "in the month of August, 1620, a Dutch ship entered James River with twenty African slaves. They were purchased by the colonists, and they and their offspring were held in perpetual servitude." He therefore concludes that "four months before the feet of the Pilgrims had touched the New World, began that system which overspread the land."

Without attempting to say whether slavery had an earlier beginning in Virginia than in the other colonies, and without entering into the merits of the contention of the proslavery advocates that the free negroes should have been universally reduced to slavery, it can be asserted that any contention based solely upon the theory that the first Afro-Virginians and their offspring were slaves from the

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<sup>2</sup> *Hudgins v. Wrights*, 1 Hening and Munford, 137.

<sup>3</sup> "Calx," p. 5.

<sup>4</sup> Third edition, vol. i, p. 2.

time of their arrival in the colony is not well founded.<sup>5</sup> Regardless of the bearing upon past or present controversies of the conclusions reached, an examination of the records will be made with the sole object of finding out what was the early status of the negro in Virginia.

If the simple fact of the introduction of negroes into the colony of Virginia is not to be taken as conclusive evidence of the beginning of slavery, upon what facts should its origin or earliest existence be posited? Throughout the seventeenth century there were in the colony persons called servants whose relations to their masters during the time of their service resembled the relations of slavery. Such temporary servitude must be distinguished from slavery. The difference between a servant and a slave is elementary and fundamental. The loss of liberty to the servant was temporary; the bondage of the slave was perpetual. It is the distinction made by Beverly in 1705 when he wrote, "They are call'd Slaves in respect of the time of their Servitude, because it is for Life."<sup>6</sup> Wherever, according to the customs and laws of a colony, negroes were regarded and held as servants without a future right to freedom, there we should find the beginning of slavery in that colony. Dr. J. C. Ballagh, in his *History of Slavery in Virginia*, very properly treats slavery as a legal status; but by drawing a sharp line between negro servitude and slavery at the date of statutory recognition of slavery he has overemphasized the importance of legislation in determining the origin of the institution.<sup>7</sup> Slavery in Virginia was instituted and developed in customary law, and was legally sanctioned at first by

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<sup>5</sup> J. C. Ballagh, in *A History of Slavery in Virginia*, was the first to point out the error in the assumption that slavery was *introduced* into Virginia. His thesis in the chapter entitled "Development of Slavery" is that "servitude . . . was the historic base upon which slavery, by the extension and addition of incidents, was constructed." Although we are not primarily concerned in this study with the origin of slavery in Virginia, the facts here presented in relation to the origin of the free negro seem to bear out Dr. Ballagh's thesis as above stated.

<sup>6</sup> *The History and Present State of Virginia*, bk. iv, p. 35. Cf. Ballagh, *Slavery in Virginia*, p. 28.

<sup>7</sup> Pp. 34, 43.

court decisions. Hence, not in statute law, but in court records and documents which contain evidence of the condition of individual negroes prior to the date of statutory recognition of slavery are to be found, if found at all, the facts relative to the beginning of slavery.

The first act of the Virginia slave code, that is to say, the first act dealing directly with the status of negroes, was passed in 1662.<sup>8</sup> The wording of the act is abundant proof that those who framed it viewed slavery as a practice well established and well understood, the word "slave" being used without an attempt to define its significance. The idea that the act was to establish slavery or to provide the institution with a legal basis seems to have been entirely absent; the sole object was to fix a rule by which the status of mulatto children could be determined. Prior to this act the word "slave" had occurred in the statutes at three different times. In 1655 it was enacted that "if the Indians shall bring in any children as gages of their good and quiet intentions to vs and amity with vs . . . the countrey by vs their representatives do engage that wee will not vse them as slaves."<sup>9</sup> This pledge to the native Indians would seem to justify the inference that some persons, if not some Indians, in the colony had been reduced to slavery. Again, in 1659 in an act concerning commercial relations with the Dutch it was declared "that if the said Dutch or other foreigners shall import any negro-slaves, They . . . shall for the tobacco really produced by the sale of the said negro pay only the impost of two shilling per hogshead, the like being paid by our owne nation."<sup>10</sup> While here the subject of legislation is not even related to status and the reference to slaves is in a conditional clause in the act, it is hardly to be supposed that the persons who drew the act would have used

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<sup>8</sup> "Whereas some doubts have arisen whether children got by an Englishman upon a negro woman should be slave or free, Be it therefore enacted . . . that all children borne in this country shall be held bond or free only according to the condition of the mother" (Hening, vol. ii, p. 170).

<sup>9</sup> Hening, vol. i, p. 396.

<sup>10</sup> Ibid., vol. i, p. 540.

the word "slave" where "servant" or "negro" was meant. The act came very close to a recognition of the legal possibility of slavery in the colony.<sup>11</sup>

Two years later the wording of an act prescribing certain punishments for runaway English servants shows beyond a doubt that some negroes in the colony were slaves. The act is entitled "English running away with negroes,"<sup>12</sup> and reads as follows: "In case any English servant shall run away in company with *any negroes who are incapable of makeing satisfaction by addition of time*, bee it enacted that the English so running away in company with them shall serve for the time of the said negroes absence as they are to do for their own by a former act."<sup>13</sup> The clause which here refers incidentally to negroes certainly shows that some of them were servants for life, slaves, incapable of compensating for lost time by any addition to their terms; but there is nothing in the act which asserts that all negroes were or should henceforth be slaves.

This is the act which has been interpreted by Dr. Ballagh in his History of Slavery in Virginia as not only a recognition of slavery, but also as a statutory reduction to slavery of all free or servant negroes.<sup>14</sup> As thus interpreted, the law is made to supply a legal basis hitherto lacking upon

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<sup>11</sup> There is some indication in the records of the Dutch settlement in New York that the supposition in the act was at times a reality. Four years before this act the Council of the Colony of New York granted to Edmund Scharbuch "permission to sail in his vessel with some purchased negroes from here to Virginia" (Documents Relative to the Colonial History of the State of New York, vol. xii, pp. 93, 94).

<sup>12</sup> Hening, vol. ii, p. 26. Italics my own.

<sup>13</sup> In the repetition of this act the following year the words "if they [the negroes] had not been slaves" are added, showing that a negro who was not a slave was required to make up his own time lost by running away (Hening, vol. ii, p. 117).

<sup>14</sup> At page 71 are used the words, "negro servants reduced to slavery in 1661." The words from which this inference is drawn are quoted thus: "Negroes are incapable of making satisfaction by addition of time" (p. 34). These words as they stand are indeed of universal application, but it will be noticed that two words have been omitted from the text of the act which when supplied give to the clause a restricted meaning and application. The clause should read: "Any negroes who are incapable of makeing satisfaction by addition of time."

which courts might rule against the liberation of negroes suing for freedom. But, manifestly, the act was not intended for such a purpose, and there is abundant evidence that it was not used to alter the status of free or servant negroes then in the colony. The truth is that no attempt was ever made to supply legal grounds for holding negroes in a status of slavery. Custom supplied all the authority that appeared to be necessary, and legislation at first merely performed the part of resolving some uncertainties concerning a well-established institution. "When the progress of the times," wrote Savigny, "calls for new institutions . . . there is necessarily a time of transition in which the law is uncertain, and it is to put an end to this uncertainty that Statute Law is required."<sup>15</sup>

This truth is well illustrated in the growth of slavery in Virginia. The time of transition from slavery sanctioned by customary law to slavery defined by statute law was the decade between 1660 and 1670. A few quotations from the preambles of the acts of this period will reveal the object of the first legislation concerning the Africans in Virginia. In 1662 we read that "whereas some doubts have arisen whether children got by an Englishman upon a negro woman should be slave or free, be it therefore enacted,"<sup>16</sup> and so forth. "Some doubts have [ing] arisen whether negroes that are slaves by birth should by vertue of baptism be made free," the answer was made in 1667 by the enactment of a statute.<sup>17</sup> An act of 1668 begins with the words, "Whereas doubts have arisen whether negro women set free should be accompted tithable,"<sup>18</sup> and another two years later was explained by a preamble which asserted that "it has been questioned whither Indians or negroes manumitted or otherwise free could be capable of purchasing Christian servants."<sup>19</sup> Doubts arose as to whether Indians captured in

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<sup>15</sup> Savigny, *System*, Sec. 13, quoted in J. M. Lightfoot's *Nature of Positive Law*, pp. 283, 284.

<sup>16</sup> Hening, vol. ii, p. 170.

<sup>17</sup> *Ibid.*, vol. ii, p. 260.

<sup>18</sup> *Ibid.*, vol. ii, p. 267.

<sup>19</sup> *Ibid.*, vol. ii, p. 280.

war should be slaves, and in 1670 was passed an act entitled "An act declaring who shall be slaves."<sup>20</sup>

Even after this decade of legislation the question as to who should or should not be slaves was not fully answered. The act of 1670 merely applied to servants brought in by ship after 1670 the test of Christianity to determine whether they should be servants for a limited time or slaves for life. The status of Africans who came or were brought to Virginia before 1670 was not determined by statute law either before or after that date. Hence, if by statute law slavery was merely regulated and not established or instituted, the only use that can be made of the statutes in determining the origin of the institution is to fix an upper limit to the period in which the beginning was made. Knowing that slavery had its beginning some time before 1661, the date of the first act recognizing it, a study of the period from 1619 to 1661 should throw much light on the question of the earliest beginnings of the free negro class.

From the quaint narrative of Master John Rolfe, who possibly wrote as an eyewitness of the introduction of negroes into Virginia, it is learned that "About the last of August [1619] came in a Dutch man of Warre that sold us twenty negars."<sup>21</sup> In the very year of the arrival of this group of African immigrants a system of labor known as indentured servitude received recognition in the laws of the colony.<sup>22</sup> It was not an uncommon practice in this early period for ship masters to sell white servants to the planters;<sup>23</sup> hence, an inference that these twenty negroes were slaves, drawn from the fact that they were sold to the colony or to the planters, would not be justified. Prior to 1619 every inhabitant of the colony was practically "a servant manipulated in the interest of the company, held in servi-

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<sup>20</sup> Hening, vol. ii, p. 283.

<sup>21</sup> Works of Captain John Smith, ed. by Arber, p. 541.

<sup>22</sup> The first assembly of the colony provided that all contracts of servants should be recorded and enforced, and thus gave legislative recognition to servitude (Colonial Records of Virginia, 1619-1680, State Senate Document, Extra, 1874, pp. 21, 28; J. C. Ballagh, *White Servitude in the Colony of Virginia*, p. 27 n.).

<sup>23</sup> Ballagh, *White Servitude*, p. 45.

tude beyond a stipulated term."<sup>24</sup> The word "freeman" was just beginning to be used to distinguish persons set free from service to the London Company from persons still in a condition of servitude either to the company or to individual freemen.<sup>25</sup> Beyond all question the first twenty negroes brought in were not introduced as freemen. The only question is whether, upon entering the colony, they became servants or slaves. The possibility of their becoming slaves must be recognized because it is conceivable that a status different from that of any person in Virginia at that time was given to persons so different from white settlers as were the Africans.

Since it is the fact that the white population in the colony in 1619 had not been familiar in England with a system of slavery or with a model slave code, and since they had developed in Virginia a system of servitude and were fortifying it by law, it is plausible that the Africans became servants in a condition similar to the status of white servants, who, after a term of service varying from two to eight years,<sup>26</sup> were entitled to freedom. According to the "Lists of living and dead in Virginia"<sup>27</sup> in 1623 and the "Muster Rolls of the Settlements in Virginia,"<sup>28</sup> a census made in 1624-1625, there were in the colony twenty-three Africans. They are all listed as "servants," thus receiving the same class name as many white persons enumerated in the lists.<sup>29</sup> Some had names, as, for instance, "Angelo, a negro woman," and "John Pedro, a neger aged 30." Others apparently had no names, and were designated simply by the word "negro" under the caption "servants." In the opinion of

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<sup>24</sup> Ballagh, *White Servitude*, p. 14.

<sup>25</sup> Hening, vol. i, pp. 126, 128.

<sup>26</sup> Ballagh, *White Servitude*, p. 49. Two hundred and fifty servants were brought into Virginia in 1619 (*ibid.*, pp. 18, 30).

<sup>27</sup> Colonial Records of Virginia, p. 37 et seq.

<sup>28</sup> J. C. Hotten, *Lists of Emigrants to America*, *passim*.

<sup>29</sup> They were distributed as follows: Abraham Piersey, 7; George Yeardley, Kt., 8; Capt. William Piersey, 1; Richard Kingsmall, 1; Edward Bennett, 2; Capt. William Tucker, 3; Capt. Francis West, 1. All these persons held other servants beside the negroes, and some of these masters, being officers in the colony, may have had merely the right of an officer over company servants (Hotten, pp. 218-258).



Thomas Jefferson, "the right to these negroes was common, or, perhaps, they lived on a footing with the whites, who, as well as themselves, were under the absolute direction of the president."<sup>80</sup>

Were any or all of these negroes permitted to realize the freedom to which servants were entitled under the laws and customs of servitude? In the records of the county courts dating from 1632 to 1661 negroes are designated as "servants," "negro servants," or simply as "negroes," but never in the records which we have examined were they termed "slaves."<sup>81</sup> By an order of the general court a negro brought from the West Indies to Virginia in 1625 was declared to "belong to Sir Francis Wyatt (then governor) as his servant."<sup>82</sup> There is nothing in the record which indicates that "servant" meant the same as "slave." Among the twenty-three African "servants" enumerated in 1624 was a negro man named Anthony<sup>83</sup> and a negro woman named Mary,<sup>84</sup> serving under different masters. In the county court records of Northampton, of date February 28, 1652, is the following order:—

Upon ye humble pet[ition] of Anth. Johnson Negro; & Mary his wife; & their Information to ye Court that they have been Inhabitants in Virginia above thirty years consideration being taken of their hard labor & honoured service performed by the petitioners in this County, for ye obtayneing of their Livelyhood And ye great Llosse they have sustained by an unfortunate fire wth their present charge to provide for, Be it therefore fitt and ordered that from the day of the date hearof (during their natural lives) the sd Mary Johnson & two daughters of Anthony Johnson Negro be disingaged and freed from payment of Taxes and leavyes in Northampton County for public use.<sup>85</sup>

<sup>80</sup> Jefferson's Reports, 119 n.

<sup>81</sup> Examples or illustrations may be seen in MS. Court Records of Accomac County, 1632-1640, pp. 55, 152 et seq.; Lower Norfolk County, 1637-1646, 1646-1651.

<sup>82</sup> The case is one which Jefferson noted from the records of the general court (Jefferson's Reports, 119 n.).

<sup>83</sup> Hotten, p. 244. In the second edition the entry referring to Anthony is as follows: "Anthony, negro, Isabell, a negro, and William her child, baptised." In an earlier edition (1874) the entry appeared as follows: "Antony Negro: Isabell Negro; and William theire Child Baptised."

<sup>84</sup> "Mary, a negro Woman [came in] in the Margarett and John, 1622" (Hotten, p. 241).

<sup>85</sup> MS. Court Records of Northampton County, 1651-1654, p. 161.



Subtracting thirty or more years from 1652, the date of this court order, we find that Anthony Johnson and possibly the woman who became his wife were inhabitants of Virginia before 1622.<sup>36</sup> If additional evidence is required to establish the fact that Anthony Johnson and his family were free in 1652, it is contained in a land patent of 1651 assigning to him in fee simple two hundred and fifty acres of land,<sup>37</sup> or in the records of a suit which he maintained in the county court in 1655.<sup>38</sup>

Just what part of the period of over thirty years of Anthony Johnson's residence in the colony was a term of servitude or how long before 1652 he had enjoyed his freedom is not clear. The term of service for white servants was not uniform, being dependent upon the conditions of the contract. Before 1643, servants without contracts generally became freemen after terms of service varying from two to eight years. After 1643 the terms of service for servants "brought into the colony without indentures or covenants to testify their agreements" were fixed by law at four to seven years, the period varying somewhat with the youthfulness of the servant.<sup>39</sup> The variations in the terms of service for negro servants appear to have been greater than the variations for white servants. In 1651 "head rights" were allowed upon the importation of a negro by the name of Richard Johnson.<sup>40</sup> Only three years later a patent calling for one hundred acres of land was issued to this negro for importing two other persons.<sup>41</sup> Hence, it appears that Richard Johnson came in as a free

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<sup>36</sup> It is evident from the census of 1624 that the negress Mary, there enumerated, was not then the wife of Anthony; but granting that Anthony and Mary Johnson were in Virginia thirty years before 1652, it is not an unreasonable inference that the only negro man named Anthony and the only negro woman named Mary in the colony thirty years before 1652 were the negroes afterward called Anthony and Mary Johnson.

<sup>37</sup> MS. Land Patents of Virginia, 1643-1651, p. 326.

<sup>38</sup> MS. Court Records of Northampton County, 1651-1654, p. 226; 1655-1658, p. 10; below, p. 32.

<sup>39</sup> Hening, vol. i, pp. 257, 441.

<sup>40</sup> MS. Land Patents of Virginia, 1643-1651, p. 326.

<sup>41</sup> Ibid., 1652-1655, p. 294.

negro or remained in a condition of servitude for not more than three years. A negro who came to Virginia about 1665 was bound to serve Mr. George Light for a period of only five years.<sup>42</sup> It appears from certain indentures to be found on record that the term of service to which a negro might be bound could be for almost any number of years. In the following agreement, for example, the term was for ten years: "Be it thought fitt & assented unto by Mr. Steph. Charlton in Court that Jno. G. Hamander Negro, his servant, shall from ye date hereof [1648] serve ye sd Mr. Charlton (his heyers or assns.) until ye last days of November wh shall be in ye year of our Lord . . . one thousand six hundred Fifty & eight and then ye sd Negro is to bee a free man."<sup>43</sup>

As another example of the contracts of indented negro servants the following extract from the Northampton County court records of 1645 is quoted:—

This Indenture witnesseth yt I Capt. Francis Pott have taken to service two Daughters of my negro Emanuell Dregis to serve & bee to me my heyers Exors. Adms. or Assigns. The one whose name is Elizabeth is to serve thirteene years which will be compleat & ended in ye first part of March in ye yeare of our Lord God one thousand six hundred Fifty & eight. . . . And ye other child whose name is Jane Dregis (being about one yeare old) is to serve ye said Capt. Pott as aforesaid untill she arrive to ye age of thirty years old wh will be compleate & ended . . . [May, 1674], And I ye said Francis Pott doe promise to give them sufficient meate, drinke, Apparel & Lodging and to use my best endeavor to bring them up in ye feare of God and in ye knowledge of our Saviour Christ Jesus. And I doe further testify yt the Eldest daughter was given to my negro by one who brought her upp by ye space of eight years and ye younger he bought and paid for to Capt. Robert Shephard (as maye bee made appear). In witness whereof have hereunto sett my hands & seale in ye 27th of May one thousand six hundred forty & five.

MR. FRANCIS POTT.

Witness the names of Thom. P. Powell & John Pott.<sup>44</sup>

It appears from this record that one of the negro children was bound to serve for a period of thirteen years and the other for a term of twenty-nine years. The latter

<sup>42</sup> General Court Records, Robinson Transcripts, p. 161.

<sup>43</sup> MS. Court Records of Northampton County, 1645-1651, p. 150.

<sup>44</sup> Ibid., p. 82.

served, however, only seven years of her term; for in 1652 her father purchased her release from the contract, and upon payment was given the following receipt: "24, May 1652. This day Capt. Pott acknowledged yt hee hath recd of Emanuell Driggs Negro satisfaction & full payment for & in consideration of the present freedome of Jane Driggs daughter of ye sd Emanuell Driggs, the sd girle beinge aged about eight years."<sup>45</sup>

It is quite clear that the children of Emanuel Dregis or Driggs became indented servants and not slaves for life, but a question arises as to their status before this contract was made. Emanuel Dregis may not have been regularly married to the mother of these two daughters of his, and the owner of their mother seems to have claimed some right to dispose of them by gift and sale to their father. But the status of Emanuel Dregis and his wife Frances is fairly well explained in other records. In 1649 Dregis and his wife Frances and one other negro called Bashasor were assigned by Roger Booker to Stephen Charlton.<sup>46</sup> Two years later the following record was made concerning the property rights of these negroes:—

Whereas Emanuel Driggs and Bashasar Farnando negroes now servants unto Capt. Franc Pott have certain cattle, Hoggs & poultry now in their possession ye wch they have honestly gotten and purchased in their service formerly under ye sd Capt. Pott & since augmented and increased under the service of Capt. Steph. Charlton now we, sd Pott & Charlton, doe hereby declare yt ye said cattle, hoggs, & poultry (with their increase) are ye proper goods of the above sd Negroes; and yt they may freely dispose of them either in their life tyme or att their death. In witness our hands 30th December 1652.

FRANCIS POTT.<sup>47</sup>

The fact that these negroes had an absolute right to this property, a right which was not destroyed by the death of the property owner, is convincing that their status was higher than the status of the slave, whose loss of liberty was absolute. Bills of sale recording the transfer of property to

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<sup>45</sup> MS. Court Records of Northampton County, 1651-1654, p. 82.

<sup>46</sup> Ibid., p. 28.

<sup>47</sup> Ibid., p. 114.

these negroes were recorded by the county court, which shows that the negroes were regarded as capable of making and enforcing a contract.<sup>48</sup> It may be of some significance in this connection to note that later in that century there was a Dregis or Driggus family of free negroes living in Northampton County.<sup>49</sup>

An instance very similar to the case of Emanuel Dregis is found in the records of the general court of Virginia for 1640-1641. The example is of special importance because there is very little specific information of earlier date concerning the condition of negroes. An order of the court runs as follows: "It appeareth to the court that John Geaween being a negro servant unto William Evans was permitted by his said master to keep hogs and make the best benefit thereof to himself provided the said Evans might have half the increase which was accordingly returned unto him by the said negro and the other half reserved for his own benefit."<sup>50</sup> Geaween, like Dregis, accumulated property, and purchased from Lieutenant Robert Sheppard his child's freedom; by order of the court the child was declared to "be free from the said Evans," its father's master, and "to be and remain at the disposing and education of the said Geaween and the child's god-father," Robert Sheppard.

The status of negroes like John Geaween, Emanuel Dregis, and Farnando fits precisely the description of servitude written in 1656 by John Hammond. "There is no master almost," says Hammond, "but will allow his Servant a parcell of clear ground to plant some Tobacco in for himself . . . which in time of shipping he may lay out for commodities, and in Summer sell them again with advantage, and get a Sow-Pig or two, which anybody almost

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<sup>48</sup> Bill of sale by Francis Pott to Emanuel Dregis of "a black cow and a red calf" (MS. Court Records of Northampton County, 1645-1651, p. 83). In 1647 Tony Kongo, a negro, was compelled in court to make good a debt, due Lewis White, amounting to three hundred and eighty-two pounds of tobacco. By the order of the court, he was allowed thirty days to guarantee payment out of "ye next croppe" (ibid., p. 131).

<sup>49</sup> MS. Court Records of Northampton County, 1689-1698, p. 463.

<sup>50</sup> General Court Records, p. 30. Published in *Virginia Magazine of History*, vol. xi, p. 281.

will give him and his Master suffer him to keep them with his own . . . and with one year's increase of them may purchase a Cow-Calf or two and by that time he is for himself."<sup>51</sup>

Upon the completion of a term of servitude negro servants were sometimes granted a written discharge, as was Francis Pryne in 1656. The court record of the discharge of this man reads as follows:—

I Mrs. Jane Elkonhead . . . have hereunto sett my hand yt ye aforesd Pryne [a negro] shall bee discharged from all hinderances of servitude (his child) or any [thing] yt doth belong to ye sd Pryne his estate.

JANE ELKONHEADE.<sup>52</sup>

The priority of the origin of the free negro class over the origin of the slave class and the continuity of the free negro class will appear as plainly when historical evidence of the beginning of slavery is sought as when examples of negro servitude are looked for. When the court records are examined with a view to finding the earliest beginnings of slavery, it appears that between 1640 and 1660 slavery was fast becoming an established fact. In this twenty years the colored population was divided, part being servants and part being slaves, and some who were servants defended themselves with increasing difficulty from the encroachments of slavery.

In 1640 the general court<sup>53</sup> rendered in a singular case a judgment which is very instructive as to the earliest development of slavery. "Three servants" of Hugh Gwyn, to wit, a Dutchman called Victor, a Scotchman named James Gregory, and John Punch, a negro, having run away from their master, were overtaken in Maryland and brought back to Virginia to stand trial for their misbehavior. The verdict of the court was "that the said three servants shall

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<sup>51</sup> P. Force, Tracts and Other Papers, no. 14, p. 14. Cited as Force Tracts.

<sup>52</sup> MS. Court Records of Northampton County, 1654-1655, p. 100.

<sup>53</sup> "The General Court so called because it tryes the Causes of the whole Country, is held twice a Year by the Governors and Council as Judges at Jamestown; viz: in the Month of April and October" (Hartwell, Blair, and Chilton, The Present State of Virginia, and the College, p. 44).

receive the punishment of whipping and to have thirty stripes apiece." Thus far there was no discrimination in penalty, but the court went on to order that the Dutchman and the Scotchman should "first serve out their times with their master according to their Indentures and one whole year apiece after the time of their service is expired . . . in recompence of his loss sustained by their absence," and that then they should serve the colony for three years. But "the third, being a negro . . . shall serve his said master or his assigns for the time of his natural life."<sup>54</sup> While there is no mention of an indenture or contract in the case of the negro, it must be remembered that not all white servants had formal contracts. If John Punch was not merely a servant with a future right to freedom, his punishment was much less severe than that of his white accomplices. If he was such a servant, his penalty was greater than the penalties inflicted upon the white men. The most reasonable explanation seems to be that the Dutchman and the Scotchman, being white, were given only four additional years to their terms of indenture, while "the third, being a negro," was reduced from his former condition of servitude for a limited time to a condition of slavery for life.<sup>55</sup>

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<sup>54</sup> General Court Records, pp. 9, 10. Printed in Virginia Magazine of History, vol. v, p. 236.

<sup>55</sup> A case which came up for trial before the general court at the July session of 1640, three months later than the case above cited, indicates that some negroes were being held as slaves as early as 1640. The record reads: "Six servants and a negro of Mr. Reginald's has plotted to run away unto the Dutch plantation." In addition to the fact that the negro is not here called a servant, the nature of the penalties inflicted indicates that the negro was a slave. The "prime agent" in the plot was a white man named Miller. His punishment was to be thirty stripes, burning of the letter R on the cheek, the wearing of shackles on his leg for one year, and seven years' service to the colony when his term to his master should expire. The punishments ordered for the other five white men were less severe, but none of them escaped with less than two years' additional service. When the court came finally to the negro, he was given a penalty exactly equal to that of the prime agent, except the addition to his time of service. These facts indicate that the negro was a slave "incapable of making satisfaction by addition of time," and that such discriminations as were made because of his race or color were made by inflicting upon him a severer corporal punishment than his white fellow-conspirators received (General Court Records, p. 11. Printed in Virginia Magazine of History, vol. v, p. 236).

Some time before 1644 Thomas Bushrod, assignee of Colonel William Smith, sold a mulatto boy named Manuel "as a slave for-Ever, but in September, 1644, the said servant was by the Assembly adjudged no Slave and but to serve as other Christian servants do and was freed in September, 1665."<sup>56</sup> By "Christian servants" here is meant covenant or indented servants. This case makes possible the statement that although some negroes were being treated as slaves, others retained their right to freedom and were not reduced to a state of slavery, not even by the statutes of 1661 and 1662 recognizing slavery. Another case in point is that of a negro set free in 1665 by order of the general court, "after serving seven years."<sup>57</sup> A similar ruling of this court in the same year was transcribed by Robinson simply as "a judgment of a negro for his freedom."<sup>58</sup>

Even these cases decided in court favorably to individual servants are no better evidence of the continuity of the free negro class than they are of the encroachments which slavery was making upon the freedom rights of negro servants. It was estimated in 1649 that there were in Virginia at that time three hundred Africans.<sup>59</sup> A majority of this number had been imported in the decade immediately preceding this date, and it appears certain that the greater part of the negroes brought in after 1640 were not permitted to realize freedom. Most of them had no indentures or contracts, and the difficulty with which such as had no contracts could have defended any rights that they possessed under the laws and customs may be inferred from the success with which some who had indentures were reduced to perpetual servitude.

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<sup>56</sup> Journal of House of Burgesses, October, 1666, in Randolph MS. in Virginia Historical Society, and printed in Virginia Magazine of History, vol. xvii, p. 232.

<sup>57</sup> General Court Records. Printed in Virginia Magazine of History, vol. viii, p. 237.

<sup>58</sup> General Court Records. Printed in Virginia Magazine of History, vol. viii, p. 243.

<sup>59</sup> "There are in Virginia about fifteen thousand English, and of negroes brought thither, three hundred good servants" (A Perfect Description of Virginia, printed for Richard Wodenoth, 1649. Reprinted in Virginia Historical Register, vol. ii, no. ii, p. 62).



A very instructive and interesting case in point is that of John Casor,<sup>60</sup> a negro of Northampton County, who came to Virginia about 1640. Strange to relate, John Casor's master was the negro Anthony Johnson, who, as we have seen, came in before 1622, and who owned a large tract of land on the Eastern Shore. According to the records made of the case, John Casor set up the claim in 1653 "Yt hee came unto Virginia for seaven or eight years of Indenture, yt hee had demanded his freedom of Anth. Johnson his Mayster; & further sd yt hee had kept him his serv[an]t seaven years longer than hee should or ought." Casor appealed to Captain Samuel Goldsmith to see that he was accorded his rights. Goldsmith demanded of Johnson the servant negro's indenture, and was told by Johnson that the latter had never seen any indenture, and "yt hee had ye Negro for his life." Casor stood firmly by his assertion that when he came in he had an indenture, and Messrs. Robert and George Parker confirmed his declaration, saying that "they knewe that ye sd Negro had an Indenture in one Mr. [Sandys] hand, on ye other side of ye Baye & . . . if the sd Anth. Johnson did not let ye negro go free the said negro Jno. Casor would recover most of his Cows from him ye sd Johnson" in compensation for service rendered which was not due. Whereupon Anthony Johnson "was in a great feare," and his "sonne in Law, his wife, & his own two sonnes persuaded the old negro Anth. Johnson to set the sd Jno. Casor free."

The case would be interesting enough and very instructive if it had ended here, but the sequel is more interesting still. Upon more mature deliberation Anthony Johnson determined to make complaint in court<sup>61</sup> "against Mr. Robert Parker that hee detayneth one Jno. Casor a negro the plaintiff's Serv[an]t under pretense yt the sd Jno. Casor is a free-

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<sup>60</sup> MS. Court Records of Northampton County, 1651-1654, p. 226; 1655-1658, p. 10. The spelling of the servant negro's name is not quite clear. As it appears in some places in the records it looks as if it might be Fazor.

<sup>61</sup> MS. Court Records of Northampton County, 1651-1654, p. 226; 1655-1658, p. 10.



man." His complaint was received, and the court, "seriously considering & weighing ye premises," rendered the following verdict, than which there are none stranger on record: "The court . . . doe fynd that ye sd Mr. Robert Parker most unrightly keepeth ye sd Negro John Casor from his r[igh]t Mayster Anthony Johnson & . . . Be it therefore ye Judgment of ye court & ordered that ye sd Jno. Casor negro shall forthwith return into ye service of his sd Mayster Anthony Johnson and that the sd Mr. Robert Parker make payment of all charges in the suite and execution."

This record is quoted at length because in itself it supports a number of important propositions: (1) Before the middle of the seventeenth century some negroes in the colony were servants by indenture under the laws of servitude. (2) Some negro servants who had become freemen owned indented negro servants. The act of 1670 forbidding free negroes to own Christian servants but conceding them the right to own servants of their own race<sup>62</sup> is thus given a concrete explanation. (3) By the middle of the century it was with difficulty that an African immigrant escaped being reduced to slavery. If by the aid of a county court one negro could reduce to slavery another who unfortunately was unable to produce his indenture, this proceeding taking place prior to any statute supporting slavery, it can readily be seen how difficult it had become for negroes to escape being made slaves for life by white masters into whose hands they came.

It is noteworthy that all the records after the middle of the century indicate that slavery was fast becoming the rule. An entry upon the minutes of the general court in 1656 shows that a "Mulatto was held to be a slave and appeal taken."<sup>63</sup> Negro servants were sometimes compelled by threats and browbeating to sign indentures for long terms after they had served out their original terms. In 1675

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<sup>62</sup> Henning, vol. ii, p. 280.

<sup>63</sup> General Court Records. Printed in Virginia Magazine of History, vol. viii, p. 163.

complaint was made by Philip Cowen, a negro, that Charles Lucas, "not being willing that he should enjoy his freedom, did with threats and a high hand and by confederacy with some other persons" compel him to set his hand to a writing which Lucas claimed was an indenture for twenty years, and to acknowledge it in the county court of Warwick.<sup>64</sup>

Fifteen years before the passage of the first act in the Virginia slave code, white persons were making assignments of negroes as slaves, and county courts were recording and recognizing the validity of contracts involving the service of negroes for life, and, in the case of female negroes, the service of the female and her offspring. In 1646 Francis Pott, preparing to return to England, sold to Stephen Charlton a negro woman called Marchant and a negro boy called Will, to be "to ye use of him . . . his heyers etc. forever."<sup>65</sup> A contract was made and recorded in Northampton County in 1652 according to the terms of which William Whittington "bargained & sold unto Jno. Pott . . . his heyers, Exors. Adms. or Assigns one negro girle named Jowan, aged about ten years, with her Issue and produce . . . and their services forever."<sup>66</sup>

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<sup>64</sup> MS. in Virginia State Archives, at one time on exhibition in a glass case; compare Calendar of Virginia State Papers, vol. i, p. 10.

The petitioner says that at the expiration of his term of service he was entitled to "enjoy his freedom & be paid three barrells of corn and a suit of clothes." This illustrates the statement of P. A. Bruce that upon the close of the negro servant's term he was entitled to the same quantity of clothing and corn as the white servant (Economic History of Virginia, vol. ii, p. 53). The practice is clearly stated in a petition made by a servant to the governor and council in 1660: "yor petins lately servid Henry Sprat of ye County of Lower Norff. who refuseth to pay him Corn and Cloths according to custome for wh ye petins obtained order of ye aforesaid Court against ye sd Mr. Sprat & C" (Calendar of Virginia State Papers, vol. i, p. 4. See also Hening, vol. iii, p. 451).

<sup>65</sup> MS. Court Records of Northampton County, 1651-1654, p. 28. Six years later the woman was living with Charlton, although during the six years since her sale by Francis Pott she had run away from her new master to go and live with John Pott, and later left his service to return to Charlton. She apparently exercised some liberty in the choice of her master (MS. Court Records of Northampton County, 1651-1654, p. 81).

<sup>66</sup> MS. Court Records of Northampton County, 1651-1654, p. 124. See also MS. Records of Lower Norfolk County, 1646-1651, p. 23,

Some time before 1660 Jane Rookins and Henry Randolph jointly purchased a negro woman called Maria, with the understanding that she and her children should belong to William Rookins and William Randolph and their heirs. William Randolph died, and his father, Henry Randolph, by deed gave to William Rookins all his right and title to the negro woman and her children. A creditor of William Randolph obtained an order against the estate of the deceased, and the Surry County court adjudged one half of the negroes, the negroes being Maria and her children, to belong to the estate of William Randolph.<sup>67</sup>

If further evidence is required to show that some negroes were regarded and held as slaves between 1640 and the date of the statutory sanction of slavery, it may be found in inventories of estates of some persons who held negroes. From the records of various counties it appears that negroes for whose service no limit is mentioned are valued in inventories at £20 to £30 sterling, while white servants of the longest terms of service receive a valuation of not more than £15 sterling.<sup>68</sup> In the journal of the House of Burgesses is recorded a petition of William Whittaker, an ex-member of the House, that he might be reimbursed from the public treasury for a loss incurred by an act of the House which set free a negro for whom the petitioner had

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for the deposition of Cornelius Loyd concerning "a little black negro boy" and his mother. The boy was given as a present to Thomas Silsey. See also Records of Northampton County, 1654-1655, April, 1654, for record of sale "unto Henry Armsteadinger one negro girle named patience to him . . . and his heyers . . . forever with all her increase both male and female."

<sup>67</sup> Petitions to the Governor and Council, in Virginia State Archives; also printed in Calendar of Virginia State Papers, vol. i, pp. 2, 3.

<sup>68</sup> MS. Court Records of York County, 1657-1662, p. 195, in Virginia State Library. In 1668 two servants, one having four and a half and the other three years to serve, were valued at £12 each, but a negro woman whose term was not specified was valued at £27 (*ibid.*, 1664-1672, p. 291, in Virginia State Library). In an inventory of the latter part of the century an Indian woman was valued as follows: "1 Indian Woman, if a slave for life £25" (MS. Court Records of Elizabeth City County, 1684-1699, p. 223, in Virginia State Library). Compare P. A. Bruce, *Economic History*, vol. ii, pp. 51, 52.

paid £25 sterling, but from whom he had had only twenty-one years of service. Hence it would seem that £25 was regarded as a price too high for servants except those whose terms were for life.

In the inventory of the estate of William Burdett, recorded in 1643, Nehemia Freenton, aged twenty-two years, having eight years to serve, was rated at a thousand pounds of tobacco, while "Caine the negro boy, very Obedient," was rated at three thousand pounds of tobacco. Edward Southers, "a little Boy having seaven years to serve," was valued at seven hundred pounds of tobacco, while "one negro girle about 8 years old" was put down at two thousand pounds.<sup>69</sup> The inventory of Major Peter Walker's estate, recorded in 1655, shows that two good men servants having four years to serve were worth thirteen hundred pounds of tobacco each, and that a woman servant having two years to serve was worth eight hundred pounds of tobacco. Two negro boys with no term limit specified were rated at forty-one hundred pounds of tobacco each, and a negro girl was rated at fifty-five hundred pounds.<sup>70</sup> The valuation put upon the servants of Thomas Ludlowe of York County in 1660 reveals the fact that a white boy, a "seasoned hand," with six years to serve, was worth less than an old negro man and just half as much as Jugg, a negro woman.<sup>71</sup> The only reasonable explanation of the wide difference in the valuation of white servants having long terms of service and negroes whose terms of service were not specified is that the negroes were servants to whose service no limit was set, that is, slaves.

Thus it appears that before legislation affected in any way the development of slavery the institution had grown up, and without doubt included within its scope a large part of the African immigrants who arrived after 1640. Be it remembered, however, that the legislative recognition and

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<sup>69</sup> MS. Court Records of Northampton County, 1640-1645, p. 225.

<sup>70</sup> Ibid., 1654-1655, p. 110.

<sup>71</sup> MS. Court Records of York County, 1657-1662, pp. 275, 278, in Virginia State Library.

sanction so abundantly given to slavery between 1660 and 1670 did not broaden the institution to include all Africans. The first slave laws reduced to a status of slavery no free negroes or negroes who were servants by covenant or contract. On the contrary, these first laws dealing with the status of the Africans in Virginia recognized the free negro as amply as they did the slave. The first one of these acts, passed in 1662, provided that the status of offspring should follow the status of the mother.<sup>72</sup> Far from reducing free negroes to slavery, this act provided for the perpetuation of the free negro population in the provision which, as applied to this class of persons, guaranteed to free colored females the right to extend their free status to their offspring. The act of 1668 dealing with the condition of the colored population related solely to the tax obligations of a free negro woman,<sup>73</sup> and two years later an act guaranteed to "negroes manumitted or otherwise free" the right to own servants of their own race, and expressly denied to them the right to purchase or to own white or "Christian" servants.<sup>74</sup> Here again we see in the first laws which recognized and sanctioned slavery a guaranty of the continuity of the free negro class.

Proof of the persistence of a free negro population, however, is not confined to inference from statutes. The county court and church records continue without a break the record of the free and servant negro through the period when slavery was given the legislative sanction. In December, 1656, Benjamin Doyle, a negro, was granted a patent for three hundred acres of land in Surry County, "due . . . by and for the transportation of six persons into the colony."<sup>75</sup> In addition to the free negro landowners of Accomac County already mentioned, the records specify a few others. In 1651 John Johnson, a negro, received as head rights for the importation of eleven persons a tract of

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<sup>72</sup> Hening, vol. ii, p. 170.

<sup>73</sup> Ibid., vol. ii, p. 267.

<sup>74</sup> Ibid., vol. ii, p. 280.

<sup>75</sup> MS. Land Patents, 1655-1664, pp. 71, 72.

five hundred and fifty acres adjoining the tract granted to Richard Johnson.<sup>76</sup> There is also a record of a grant in 1651 of fifty acres to John Johnson, sr.<sup>77</sup> A few years later John Johnson, a negro, entered suit against John Johnson, sr., to recover four hundred and fifty acres of land.<sup>78</sup> Certainly this land owned by free negroes remained, for many years at least, in their possession or in the possession of their descendants.<sup>79</sup> In 1667 Emanuel Cambew, a negro, received a grant of fifty acres in James City County.<sup>80</sup> The next year a deed calling for fifty acres was executed by Robert Jones, a tailor of Queen's Creek, to "John Harris negro his heyers, Executrs, Admtrs, & Assigns forever."<sup>81</sup> Some time after 1676 a lease of two hundred acres for a period of ninety-nine years was issued by John Parker to Philip Morgan, a negro.<sup>82</sup> In one instance at least a negro servant became the overseer of his master's servants. Beverly defines an overseer as "a man who having served his time has acquired Skill and Character of an experienced Planter and is, therefore, intrusted with the Direction of the Servants and Slaves."<sup>83</sup> In 1669 Hannah Warwick, probably a white servant, on trial before the general court, produced in extenuation of her case convincing evidence that her overseer was a negro.<sup>84</sup> In 1673 a judgment was rendered by the general court against Mr. George Light, who had unlawfully detained in servitude beyond his contract term of five years a negro indented servant. It was ordered that

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<sup>76</sup> MS. Land Patents, 1652-1655, p. 101.

<sup>77</sup> MS. Court Records of Northampton County, 1651-1654, pp. 17, 18.

<sup>78</sup> Ibid., p. 200.

<sup>79</sup> J. C. Wise, *Ye Kingdome of Accawmacke*, p. 285.

<sup>80</sup> MS. Land Patents, no. 6, p. 39.

<sup>81</sup> MS. Court Records of York County, 1664-1672, p. 327, in Virginia State Library.

<sup>82</sup> MS. Court Records of Accomac County, 1676-1690, p. 185, quoted in P. A. Bruce, *Economic History*, vol. ii, p. 127 n. See MS. Records of Northampton County, 1683-1689, p. 258, for a judgment against the estate of a mulatto.

<sup>83</sup> Book iv, p. 37; compare P. A. Bruce, *Economic History*, vol. ii, p. 18.

<sup>84</sup> General Court Records. Printed in *Virginia Magazine of History*, vol. viii, p. 163.

the negro should "be free from his said master and that the said Mr. Light pay him Corne and Clothes according to the Custome of the Country and four hundred pounds tobac & Caske for his service Done him since he was free and pay costs."<sup>85</sup>

The upper limit of the period in which it was possible for negroes to come to Virginia as servants and to acquire freedom after a limited term is the year 1682. A law of 1670 was intended to enslave all negroes brought in after its enactment, but in practice it permitted a few to escape. In 1678 two men of African blood were sold for terms of seven years by inhabitants of Boston to residents of Virginia.<sup>86</sup> Under the provisions of the law of 1670 "all servants not being christians imported into this colony by shipping" were to be slaves for their lives, but such servants as came by land were to "serve, if boys and girls until thirty years of age, if men or women, twelve years and no longer."<sup>87</sup> After this act had been in force twelve years, the preamble of a new act asserted that "many negroes, Moors, mulattoes and others" born in a heathen country and of heathen parents had, before coming to Virginia, been converted to the Christian faith, and that such persons, when sold in Virginia, had to be sold as servants for a limited term. Hence an act was passed repealing the law of 1670 and making slaves of all persons of non-Christian nationalities thereafter coming into the colony, whether they came by sea or land and whether or not they had been converted to Christianity after capture.<sup>88</sup>

After the enactment of this law the free negro population

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<sup>85</sup> General Court Records, p. 161.

<sup>86</sup> Bill of Sale: "I, John Indicott, cooper, Inhabitant of Boston in New England, have sold unto Richard Medlicott A Spanish Mulatto, by name Antonio. I having full power to sell him for his life time. But at the request of William Taylor, I doe sell him But for seven years from the day that he shall Disembark in Virginia" (MS. Court Records of Middlesex County, Virginia, March 5, 1677-1678. See also *ibid.*, May 18, 1678. Cited in William and Mary College Quarterly, vol. vi, p. 117).

<sup>87</sup> Henning, vol. ii, p. 283.

<sup>88</sup> *Ibid.*, vol. ii, pp. 490, 491.

in Virginia received from imported negroes no more recruits of which we have any record until after the non-importation act of 1778.<sup>89</sup> By 1662 other means of growth had been opened up to this class. For the next two hundred years the free colored population was increased by five classes of colored persons springing from the population already existing. The classes may be enumerated as follows:—

(1) Children born of free colored parents. The rule of *partus sequitur ventrem* was applied consistently from 1662 to 1865, and natural increase or procreation was throughout this period an important factor in the growth of the free negro population.

(2) Mulatto children born of free colored mothers.

(3) Mulatto children born of white servant or free women.

The most numerous class of the mulattoes was of slave-women parentage, but such children were slaves. Both classes of free mulattoes were the product of illegitimacy, since the laws prohibited the intermarriage of whites and negroes, bond or free.<sup>90</sup> Under the provisions of the law of 1691 free mulatto bastards were bound by the church wardens as apprentices to responsible white persons for a term ending upon their attaining the age of thirty years.<sup>91</sup> In the revision of this act in 1705 one year was added to the period of apprenticeship.<sup>92</sup> By 1774 this long-term apprenticeship had come to be regarded as bearing "an unreasonable severity toward such children," and it was shortened to twenty-one years for males and eighteen years for females.<sup>93</sup> After the disestablishment of the Anglican

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<sup>89</sup> The last clause of the act of this date for preventing the further importation of slaves into Virginia declared: "That every slave imported into this commonwealth, contrary to the true intent and meaning of this act, shall upon importation become free" (Hening, vol. ix, p. 471; vol. xii, p. 182). Under the operation of this provision a few negroes occasionally recovered their freedom (5 Call, 425; MS. Petitions, A 2880, A 2882).

<sup>90</sup> Hening, vol. iii, p. 87.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid., vol. iii, p. 453.

<sup>93</sup> Ibid., vol. viii, pp. 134, 135.



church in 1785 this class of persons were bound out by the overseers of the poor as they had been previously by the church wardens.<sup>94</sup>

(4) Children of free negro and Indian mixed parentage. If such children had no visible means of support, they were bound out as apprentices, just as were free mulatto children. The offspring of all colored apprentices born during the apprenticeship became, by the mere force of the law, apprentices to the masters of their mothers on terms similar to those under which the mothers were bound.<sup>95</sup> All colored apprentices were counted with the free colored population even during their apprenticeship.

(5) Manumitted slaves. Manumission was the most important of all the methods by which the free colored population was increased in numbers. In an act of 1670 occurred the words "negroes manumitted and otherwise free." Having considered in this chapter the "otherwise free," the following chapter will be devoted to those who were manumitted.

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<sup>94</sup> Hening, vol. xii, pp. 27, 28.

<sup>95</sup> Gwinn v. Bugg, Jefferson's Reports, 87 (1769); Howell v. Netherland, Jefferson's Reports, 90 (1770).

## CHAPTER III

### MANUMISSION

Manumission is the term which may be applied to all the various processes by which negroes in Virginia were taken from a condition of slavery and legally raised to a status of freedom, saving only that act of the nation by which slavery was abolished in all the States and to which is properly applied the term emancipation.<sup>1</sup> There are three general methods by which slaves in Virginia were manumitted or legally set free during the life of the institution of slavery: (1) by an act of the legislature, (2) by last will and testament, and (3) by deed. A still more general classification recognizes only two kinds of manumission—public and private, the first of the three methods above being classed as public manumission and the last two of the three bearing the name of private manumission.

According to strict legal theory and the conception of slavery maintained by the courts in Virginia in the nineteenth century, there were no private manumissions. A so-called private manumission, that is, a manumission by will or deed, was not in fact the act of the slave-owner, but was "the conjoint act of the law and the master."<sup>2</sup> "The question of emancipation," said the Virginia supreme court of appeals in 1830, "is a question of statutory law and can only be resolved by referring to the terms of the statute."<sup>3</sup> In theory, a master who freed a slave exercised a power dele-

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<sup>1</sup> Emancipation in Virginia came as a result of the Civil War, and was an accomplished fact at its close in the spring of 1865. Emancipation was formally accepted by the General Assembly in a joint resolution of February 6, 1866 (Acts of the General Assembly of Virginia, 1865-1866, p. 449, cited as Acts; Richmond Whig, August 11, 1865; J. P. McConnell, *Negroes and their Treatment in Virginia from 1865 to 1867*, p. 11).

<sup>2</sup> *Wood v. Humphreys*, 12 Grattan, 333 (1855).

<sup>3</sup> *Thrift v. Hannah*, 2 Leigh, 319.

gated to him by statute. To regulate or determine the status of individuals was a sovereign power. By manumission, individuals who were "in truth *civiliter mortuus*"<sup>4</sup> and who had the character of property rather than of persons were raised to life and personality within the State and accorded civil rights and civil liberty. The power to do this was of such a high and sovereign character that not even the legislature could exercise it except by delegation from the constituent legislative authority. Indeed, a practical application was made of the theory in 1849, when the constitutional convention expressly denied to the General Assembly the power to manumit a slave.<sup>5</sup>

Viewing slavery as a legal status imposed upon persons by the laws, it is not surprising that the colonial legislature, which enacted the first slave laws and freely imposed the slave status upon certain persons, should assume that it had the power to set slaves free. The first use in Virginia of the legislative power to break the bonds of a slave was made in 1710. A negro slave named Will had been "signally serviceable in discovering a conspiracy of divers Negroes for levying war in this colony," and in recognition and reward of this public service an act was passed conferring freedom upon him.<sup>6</sup> However, it was never the policy of the colonial legislature to exercise its power to manumit slaves except for some such special service or merit as that for which the slave Will received his freedom. In 1723 it delegated to the governor and the council the power to pass upon the merit of any claims to freedom based upon meritorious service performed by a slave.<sup>7</sup> But upon an occasion which arose out of circumstances connected with the Revolutionary War the legislature deemed it expedient to resume the exercise of its right to pass a private act of

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<sup>4</sup> Peter v. Hargrave, 5 Grattan, 12.

<sup>5</sup> Constitution of Virginia, 1851, sections 19, 20, 21; Journal, Acts, and Proceedings of a General Convention, 1850, appendix, p. 8.

<sup>6</sup> "The said Negro Will is and shall be forever hereafter free from his slavery . . . and shall enjoy and have all the liberties, privileges, and immunities of or to a free negro belonging" (Hening, vol. iii, p. 536).

<sup>7</sup> Hening, vol. iv, p. 132.

manumission. The circumstances were that while Lord Dunmore, the royal governor, who had deserted his office and fled the province, was absent from the seat of government, application was made for permission to manumit the slaves of John Barr, of Northumberland County, who had in his will expressed the desire that they should be free. In the absence of His Excellency the consent of the governor and the council obviously could not be obtained. Fortunately for the petitioners, the Assembly considered that the peculiar circumstances justified a special legislative dispensation. An act was passed confirming Barr's will, but specifying that the act should establish no precedent except in cases exactly similar.<sup>8</sup>

The act did, however, become a precedent in one respect, namely, as to the location of the power to pass upon applications for permission to manumit slaves. The Assembly continued to perform the function, previously exercised by the council, of receiving and passing upon the merit of applications. "Application having been made" in 1779, a special act of the legislature was passed manumitting three slaves,—John Hope, a mulatto named William Beck, and Pegg.<sup>9</sup> Upon similar application made in 1780 the legislature set free Ned, the property of Henry Delony, and Kate, who belonged to Benjamin Bilberry.<sup>10</sup>

As indicative of the policy of the legislature with reference to the use of this power of freeing persons from slavery, as well as in illustration of the form of such acts, we quote from the laws the following specimen of acts of manumission:—

*An act for the manumission of a certain Slave.*

WHEREAS a negro man slave named Kitt the property of Hinchia Mabry, of the County of Brunswick, hath lately rendered meritorious service in this commonwealth, in making the first information and discovery against several persons concerned in counterfeiting money, whereby so dangerous a confederacy has been in some measure broken, and some of the offenders have been discovered and

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<sup>8</sup> Hening, vol. ix, p. 320.

<sup>9</sup> Ibid., vol. x, p. 211.

<sup>10</sup> Ibid., vol. x, p. 372.

brought to trial; and it is judged expedient to manumit him for such service; *Be it therefore enacted by the General Assembly*, That the said Kitt be, and is hereby declared to be emancipated and set free; any law or usage to the contrary notwithstanding.<sup>11</sup>

From the Revolutionary War onward a more extensive and general use was made of this form of manumission than merely to reward acts of public service. The legislature became a sort of court of equity for granting relief to masters who were confronted with legal or other difficulties in freeing their slaves as well as for extending mercy to slaves of a deserving or piteous character.<sup>12</sup> In more than one instance special legislative acts were obtained to give legal validity to wills of manumission recorded before the act of 1782 authorizing this procedure.<sup>13</sup> Hundreds of colored petitioners sought special acts that they might not be deprived of freedom because of mistake or oversight or fraud in the execution of a will or of an expressed intention of a master to set them free.<sup>14</sup> Among the acts of a private nature passed in the period of the Commonwealth down to about 1825 are to be found a large number of acts setting slaves free or granting such as were already liberated a legal right to reside in the State.<sup>15</sup>

The method of manumission by an act of the legislature is not the method the genesis of which requires the more detailed explanation. The colonial House of Burgesses, the sovereign legislative body in Virginia, inferred from its right to make, its right to unmake, a slave. But what was

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<sup>11</sup> Hening, vol. x, p. 115 (1779). It was further enacted that the treasurer of the Commonwealth "pay to Hinchia Mabry . . . the sum of one thousand pounds [of tobacco] out of the publick treasury, as a full compensation for the said slave." In all cases where the special act of manumission was in reward of a public service, provision was made for compensating the owner of the slave for his loss. Cf. Hening, vol. iii, p. 619; vol. xi, p. 309.

<sup>12</sup> See, for example, an act of 1792 manumitting Rosetta Hailstock and her three children, who had been barred from freedom by a legal technicality (Hening, vol. viii, p. 618). See also *ibid.*, vol. xi, p. 363.

<sup>13</sup> Hening, vol. xii, pp. 611-613; vol. xiii, p. 619.

<sup>14</sup> For example, see MS. Petitions, Henrico County, 1818, A 9290.

<sup>15</sup> Acts of a private character, 1811-1812, p. 131; 1813-1814, p. 153; 1814-1815, p. 151. The private acts of almost any year within the above-named period will afford examples.

the origin of the right of an individual slave-owner to bestow civil rights and civil liberties upon a slave, which in the eyes of the law was a thing? Manumission by a will or a deed cannot be regarded as merely a transfer of the property rights in the slave from the master to the slave, because in the eyes of the law there existed "no right in the slave to acquire property."<sup>16</sup> "Manumission," said Judge Tucker, "is not strictly speaking a gift of property. It is the exoneration of a human being from the bonds which our institutions have fastened upon him."<sup>17</sup>

Now, the first law which could be construed as delegating to or conferring upon slave-owners any right to make free men of their slaves was enacted in 1691,<sup>18</sup> but it appears from the records of the county courts that manumissions had been taking place several decades before this act was passed. In fact, the act itself, which was a rigid restriction upon the right of private manumission, shows that the act did not originate the right. The first wills of manumission in the colony were made and recorded not only prior to the statute of 1691, but also in advance of any statute in regard to slavery. To reconcile these facts with the nineteenth century theory of manumission, Judge Brooks, speaking for the court in *Thrift v. Hannah*, said, "Although it had been the practice of owners of slaves to emancipate their slaves before the act of 1691, that *practice* gave no perfect right to owners, of their own will to emancipate their slaves."<sup>19</sup>

The origin of that practice has its explanation in the close relations of indentured servitude and slavery in the seventeenth century. Before slavery as an institution had fully diverged from indentured servitude it borrowed from that system the practice of manumission by individual masters. Under the system of indentured servitude the time or term of service for which a servant was bound was, though the

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<sup>16</sup> *Ruddle's Executors v. Ben*, 10 Leigh, 480 (1839).

<sup>17</sup> *Parks v. Hewlett*, 9 Leigh, 511 (1838).

<sup>18</sup> *Hening*, vol. iii, p. 87.

<sup>19</sup> 2 Leigh, 319. See also argument of council in *Phoebe et al. v. Boggess*, 1 Grattan, 129 (1844).

servant himself was not, regarded as property. The unexpired time of a servant could be alienated, like other property, by gift, sale, or bequest.<sup>20</sup> The servant, unlike the slave of the eighteenth and nineteenth centuries, was capable of contracting and of holding property. If the master of a servant chose to sell or make a gift of the servant's unexpired time to the servant himself, the servant was capable of receiving the same and would thereafter owe service to no man. For example, the will of Samuel Thacker, of Essex County, contained this item: "I give unto my servant, John Glary, one year of his time."<sup>21</sup> It has been noted in the chapter on negro servitude that evidence of the discharge of a negro servant was sometimes recorded in a written instrument. Now, in the seventeenth century the processes by which masters set negroes free, whether they were servants for a time or for life, were more like discharges from servitude than manumissions from slavery.

In 1655 Richard Vaughan, of Northampton County, had recorded by the county court the following declaration respecting one of his negroes: "These testify that Mr. Rich Vaughan doe hereby acquitt & discharge one negro Boye known by the name of James from all Claymes or Demands of service for myself, heyers, Exors., Adms. provided the negro do not covenant with any person but shall keepe himselfe free."<sup>22</sup>

Two years later Anne Barnhouse, of York County, executed an instrument of writing which in form was quite similar to the deeds of manumission of the eighteenth and nineteenth centuries. It reads as follows: "Mihill Gowen

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<sup>20</sup> As an example of the transfer of the time of servants by bequest, note the following will, of date 1657: "I Francis Jones Widow of ye county of York Doe freely give unto my Loving Sonne Francis Townshend these servants and cattle . . . Five Servants & one child their names John Reeves, John Keech, Richard Poutry, John Swillinante & one negro woman named sarah and his child Francis two years old" (MS. Court Records of York County, 1657-1662, p. 88. Compare Ballagh, *White Servitude*, pp. 43, 44).

<sup>21</sup> Essex County Records, 1713, abstracts printed in *Virginia Magazine of History*, vol. xviii, p. 329.

<sup>22</sup> MS. Court Records of Northampton County, 1655-1658, p. 3.

negro late servant of my brother Xopher Stafford Deced . . . had his Freedome given him by his last will & Testament—1654—after expiration of four years service unto my Uncle Robert Stafford therefore know that I absolutely quitt & discharge the said Mihill Gowen from any service and forever set him free.”<sup>23</sup>

In a similar writing of the same date Anne Barnhouse assigned as a gift to Mihill Gowen a child of his, born of a negro woman belonging to Anne Barnhouse during Gowen’s four-year term of service. The writing binds Anne Barnhouse “never to trouble or molest the said Mihill Gowen or his said son William or demand any service of Mihill or his son.”<sup>24</sup> Even if the negroes discharged by these legal instruments were slaves prior to their discharge, it is perfectly clear that the conception which their owners had of slavery was not such as prevailed at a later time. A slave, in the seventeenth century conception, was merely a person serving for life. If such slave, who was then regarded as a person and not as a thing (as he later came to be), were discharged and given a pledge by his master that no further service would be demanded, he went as a free man, just as did a servant freed at the expiration of a period of contract servitude. In the nineteenth century the gift or assignment of a slave child to its free father, as in the case of the gift by Anne Barnhouse of the child William to its father, would have rendered the child a slave to its father; but in the seventeenth century the result of such a process was the complete freedom of the child.

Not only in such of these early writings as took the form of deeds of manumission, but also in the earliest recorded wills bequeathing freedom we see the analogy between manumission as first practiced and the discharge from servitude of indented servants. As was shown in a former chapter, it was the custom and later the law of indented servitude that the servant, white or colored, receive from his master

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<sup>23</sup> MS. Court Records of York County, 1657-1662, p. 45, in Virginia State Library.

<sup>24</sup> Ibid.



at the time of his discharge from servitude a certain amount of property called "freedom dues."<sup>25</sup> Nearly all of the seventeenth century wills of manumission contained grants of property to the liberated negroes. The earliest of which we have any record is that of Richard Vaughan, written in 1645 and recorded in 1656, making bequests of a considerable amount of property to each negro set free.<sup>26</sup> In 1657 Nicholas Martin, of York County, left a will setting free two negroes, and providing that "each of them have . . . one Cow and Three Barrells of Corne Clothes & Nayles to build them a house."<sup>27</sup> Thomas Whitehead of the same county died about 1660, leaving a will which shows that the testator believed that he was merely releasing his negro from further obligations of service or simply shortening a servant's term. The item of the will giving to the negro the right which the testator had had to his service reads: "I sett my negro free . . . he shall be his own man from any person or persons whatsoever."

This negro was considered by his master as having the

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<sup>25</sup> See above, p. 34 n.

<sup>26</sup> "The last will and testament of Mr. Richard Vaughan planter in Ocohamocke, in Accomacke. . . .

"And for my old Negro woman (after my decease) to remayne with her Dame, till her Dames decease; and then bee free; and to receive twoe Cowes wth calfe (or calves by their side) two suits of clothes, a bedd & a Rugg, a chest & a pott with foure Barrells of Corne & a younge breedinge Sowe; Likewise my Negro girle Temperance (after my decease) to bee possessed of two Cowes and to have their increase male and female; and she to remayne with her Dame . . . to be brought up in the Fear of God & to be taught to read & make her owne clothes, and after her Dames decease [and when] she come to twenty yeares of age . . . to receive two cows with calves (or calves by their side) Two good suits of clothes, a good Bedd & Bowlster & a Rugg & two Blanketts & a pott and one great Brass Kettle with Four Barrells of corne & a younge breeding sowe."

The rest of the negroes, three in number, were provided for in a similar way, and then there was appended the clause "that ye three Negro girls be possessed of the plantacon of Jno Walthome beinge to this plantacon some hundred & forty & four acres of land; and he to build them a Home twenty-five feete in length and twenty feete broad, with one chimney" (MS. Court Records of Northampton County, 1654-1655, pp. 102, 103).

<sup>27</sup> MS. Court Records of York County, 1633-1694, p. 108, in Virginia State Library.

capacity to receive the property rights in the negro's time and also certain of the master's personal effects; for other items of the will provided as follows: "I give my negro man named John all my wearing clothes, my shirts & hatts & shoes and stockings and all that I used to weare. I give unto my negro named John Two Cows One called gentle and the other a black heifer & I give him house & ground to plant upon as much as he shall tend himselfe & peaceably to enjoy it his life time without trouble." A short time after this will was recorded the county court of York decided that the instrument had the effect of making the negro a free man, and that he was legally entitled to come into possession of the property bequeathed to him by his master.<sup>28</sup>

All the instances of manumissions by individual masters above cited occurred before the institution of slavery had reached the legislative phase of its development. The first slavery legislation, in 1662, in no way interrupted the practice of manumission. Whether the frequency of private manumissions in the seventeenth century was a result more of a strong body of sentiment favorable to freedom than of an imperfect, immature development of the system of slavery is a question that may not be answered with certainty. Probably the freedom of some negroes was due to the one and the freedom of others due to the other of these conditions, but the evidence points clearly to the fact that up to 1691 the class of "negroes manumitted" was becoming noticeably larger. The tax obligations of this class formed a subject of legislation in 1670.<sup>29</sup> In 1684 John Farrar, of Henrico County, wrote in his will the following item: "I give unto my negroe Jack his freedom after Christmas day next & in ye meantime he continue on my plantation & use his endeavors with the rest of my hands to make a Cropp."<sup>30</sup> Daniell Parke, of York County, in 1687, "considering the time and ffaithful Service" of one of his ne-

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<sup>28</sup> MS. Court Records of York County, 1657-1662, p. 217, in Virginia State Library.

<sup>29</sup> Hening, vol. ii, p. 280.

<sup>30</sup> MS. Court Records of Henrico County, 1677-1692, p. 299, in Virginia State Library.

groes, willed that he should be free at the time of the testator's death, and should have an annual allowance of provisions.<sup>31</sup> The will of Nathaniel Bacon, sr., in 1691, bequeathed to "Molatto Kate her freedome, Itt being formerly promised by my deceased wife."<sup>32</sup> The will of John Carter, proved in Lancaster, June 11, 1690, gave freedom to "several negroes."<sup>33</sup>

By the year 1690 the free negro class had become an object of suspicion and fear. The increasing frequency of manumissions created apprehensions as to the consequences of allowing the practice to continue, and restrictive legislation was deemed expedient. The preamble of the restrictive act, which was passed in 1691, declared a law to be necessary to prevent manumissions, because "great inconvenience may happen to this country by setting of negroes and mulattoes free by their either entertaining negro slaves or receiving stolen goods or being grown old bringing a charge upon the country."<sup>34</sup> Under the provisions of this act no negro or mulatto was to be set free unless the person so doing should pay the charges for transporting the manumitted negro beyond the limits of the colony. Thus was devised a scheme which would offer three obstacles to the increase of the free negro class: A charge of transportation would restrain the master; the prospect of banishment would restrain the desire of the slave to be free. Should both of these restraints fail in any case, removal would prevent addition to the free colored class.<sup>35</sup>

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<sup>31</sup> The will bound the executors to "allow unto the said negro fiteene Bushells of Clean shilled Corne and fifty pounds of dryed beif to be delivered him annually as long as hee shall live. Also one Kersey Coat and Britches, two pair of yarne stockings two white or blew shirts one pair of blew drawers an Axe a Hoe and to pay his leavies" (MS. Court Records of York County, 1687-1691, p. 278, in Virginia State Library).

<sup>32</sup> MS. Court Records of York County, 1690-1694, p. 154, in Virginia State Library.

<sup>33</sup> Virginia Magazine of History, vol. xi, p. 237.

<sup>34</sup> Hening, vol. iii, p. 87.

<sup>35</sup> Under the provisions of this law Richard Trother, of York County, near the close of the century made his will which reads: "I will that old negro Peter and negro Tom have their true and

The conduct of the legislature in 1710 in manumitting by special act a negro slave might appear to be inconsistent with the restrictive policy begun in 1691, unless the legislative purpose in both instances be kept in view. The policy of the colonial legislature, begun in 1710, of rewarding with freedom any acts of special merit in slaves was no indication of the growth of freedom sentiment. Its real intent was a more perfect disciplining of negroes in slavery. Freedom in the case of the negro Will was awarded as an example to discourage in slaves that which most free negroes were suspected of encouraging, namely, insubordination and any disposition to plot mischief. Danger from conspiring and plotting negroes was the common object at which both laws were designed to strike.

Notwithstanding the effort made to prevent servile insurrection, new conspiracies were discovered within the next dozen years, and the fears of the people were again much aroused. "Tumultuous and unlawful meetings," "secret plots and conspiracies carried on among" all classes of negroes, "dangerous combinations," the exchange of advice "to rebel and make insurrection," brought the colonial legislature to declare existing laws "insufficient."<sup>36</sup> The free negroes, suspected and accused upon every occasion of an outbreak, became in this instance the objects of restrictive legislation. By an act passed in 1723 they were forbidden to visit or meet with slaves and to carry or own a firelock.<sup>37</sup> They were deprived of the right to vote at elections and discriminated against in the levying of taxes;<sup>38</sup> but still, despairing of success in restraining the free negro by drastic police measures, the legislature determined to prohibit entirely manumission by individual slave-owners. In 1723 an act was passed which declared that under no pretense

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perfect liberty and freedome six days after my wife's decease and 15 pounds sterling money to be paid apiece for their transportation" (MS. Court Records of York County, 1694-1702, p. 194, in Virginia State Library).

<sup>36</sup> Hening, vol. iv, p. 126.

<sup>37</sup> Ibid., vol. iv, p. 131.

<sup>38</sup> Ibid., vol. iv, p. 133.

whatsoever could a master, without the license of the governor and the council, manumit a slave.<sup>39</sup> Moreover, "meritorious service" was made the sole ground upon which permission might be obtained for setting free a slave.<sup>40</sup> If this law prohibiting manumission were violated, it became the duty of the churchwardens of the parish in which the violation occurred to apprehend and sell the negro "by public outcry," and to apply the receipts to the use of the vestry.

From this time till near the end of the colonial period, or, in other words, for nearly half a century, the policy of prohibiting voluntary manumission met with little opposition.<sup>41</sup> The provisions of 1723 were reenacted in 1748 with no alterations that indicate a desire to allow to the free negro class wider liberty or possibility of increase.<sup>42</sup> Under the enforced prohibitions of these laws, manumissions were few and widely separated.<sup>43</sup> The "meritorious service" for which a slave could expect to be rewarded with freedom was something more than faithfulness of service. In 1729 the discovery by a slave of an herb medicine by which wonderful cures could be effected merited favorable action by the governor and the council.<sup>44</sup> Rev. Charles Greene de-

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<sup>39</sup> Hening, vol. iv, p. 132.

<sup>40</sup> Cf. J. B. Minor, *Institutes of Common and Statute Law*, vol. i, p. 167.

<sup>41</sup> That "the manumission of slaves was never popular in the colony" was the opinion of a writer so careful of statement as H. B. Grigsby (*Collections of the Virginia Historical Society*, vol. x, p. 133. Cited as *Virginia Historical Collections*).

<sup>42</sup> Hening, vol. vi, p. 112.

<sup>43</sup> "The number of manumissions under such restrictions must necessarily have been very few" (St. G. Tucker, *A Dissertation on Slavery*, ed. 1796, p. 71).

<sup>44</sup> Governor Gooch asserted in a letter to the Board of Trade that he had "met with a negro, a very old man who has performed many wonderful cures of diseases. For the sake of his freedom he has revealed the medicine, a concoction of roots and barks. . . . There is no room to doubt of its being a certain remedy here & of singular use among the negroes—it is well worth the price (£60) of the negro's freedom since it is now known how to cure slaves without mercury" (*Sainsbury Transcripts from the British Public Record Office*, vol. ix, p. 462).

sired to manumit his slave woman, Sarah, in 1767, but under the laws in force he could not carry out his desire.<sup>45</sup>

Up to 1763, the date of the close of the struggle between the English and the French colonies in America, wars and troubles with the Indians had occupied so much of the attention of the people that there was little opportunity for the growth of an enlightened sentiment favorable to freedom for the negroes, whose labor was proving so valuable in the development of the resources of the colony. Jefferson once wrote that at the time when our controversy with England was still "on paper only, few minds had yet doubted but they [the negroes] were as legitimate subjects of property as their horses or cattle."<sup>46</sup> Andrew Burnaby, travelling in Virginia from 1759 to 1760, asserted that "their [the people's] ignorance of mankind and of learning exposes them to many errors and prejudices, especially in regard to Indians and Negroes, whom they scarcely consider of the human species."<sup>47</sup>

This statement was written at about as late a date as it could have been truthfully made, for the principles of the rights of man and freedom by nature could not effect a revolution against foreign oppression and not ameliorate the hard situation of Virginia's black population. An article in the Virginia Gazette in 1767 began with the following significant words, "Long and serious reflections upon the nature and consequences of slavery," and went on to say that "now, as freedom is unquestionably the birth-right of all mankind, Africans as well as Europeans, to keep the former in a state of slavery is a constant violation of the right and

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<sup>45</sup> MS. Petitions, Fairfax County, 1785, A 5460.

<sup>46</sup> To Edward Coles, August 25, 1814, in H. S. Randall, *Life of Thomas Jefferson*, vol. iii, p. 643. W. Goodell erroneously used this sentence from Jefferson's letter to describe the condition or state of sentiment in Virginia at the time the letter was written (*The American Slave Code in Theory and Practice*, p. 48). The time of which Jefferson was writing was when he "came into public life" before the war with England. The statement would not have been true had it been made with reference to conditions in 1814.

<sup>47</sup> *Travels through the Middle Settlements of North America*, p. 54.

therefore justice."<sup>48</sup> Two years later Thomas Jefferson became a member of the legislature, and upon his initiative and with his aid Colonel Bland, one of the oldest, ablest, and most respected members of that body, pressed forward a proposition to remove the restrictions which for forty-six years the laws had imposed upon voluntary manumission. "I seconded his motion," wrote Jefferson, "and as a younger member was more spared in the debate, but he was denounced as an enemy to his country and was treated with the greatest indecorum."<sup>49</sup> Opposition to the measure was as yet overpowering, but the kind of support it received augured well for a later victory. Even a legislature as conservative as this one declared that the discriminatory tax levied upon free negroes and mulattoes since 1668 was "derogatory to the rights of free born subjects," and, therefore, that it stood repealed.<sup>50</sup> A new antislavery spirit which was nation-wide in its operation was powerfully affecting sentiment in Virginia. While that spirit was rising at the North which was to culminate from 1777 to 1785 in acts of emancipation in Vermont, Pennsylvania, Massachusetts, New Hampshire, Connecticut, and Rhode Island, and in a manumission act in Maryland, it was destined to grow and spread in Virginia till it effected the repeal of the old restraints upon manumission, and strongly threatened the existence of the institution of slavery in that State.

The movement in Virginia kept a remarkably even pace with the American Revolution. Since both were applications of the principles of natural equality and individual liberty, they must indeed be viewed as two parts of the same current of progress. "The glorious and ever memorable Revolution," argued many petitioners of the legislature, "can be justified on no other principles, but what do plead with still greater force for the emancipation of our slaves

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<sup>48</sup> Virginia Gazette, March 19, 1767, quoted in Views of American Slavery, Taken a Century Ago, p. 109.

<sup>49</sup> Jefferson to Edward Coles, August 25, 1814, in Randall, Life of Jefferson, vol. iii, p. 643; G. Tucker, Life of Thomas Jefferson, vol. i, p. 46.

<sup>50</sup> Henning, vol. ii, p. 267; vol. viii, p. 393.



in proportion as the oppression exercised over them exceeds the oppression formerly exercised over the United States by Great Britain."<sup>51</sup>

This logical application of the Revolutionary philosophy, though not quite convincing to the legislature, was freely and conscientiously accepted by many individuals.<sup>52</sup> From the beginning of the war it became quite common among slave-owners to apply the doctrine; for example, John Payne, of Hanover County, in the year of the Declaration of Independence freed his slave because he was "persuaded that liberty is the natural condition of all mankind."<sup>53</sup> Some slave-owners ignored the laws, as did Charles Moorman, a Quaker, of Louisa County, who in 1778 executed a deed of manumission relinquishing his right to thirty-three slaves as if there were no laws forbidding such action.<sup>54</sup> Joseph Mayo, of Henrico County, owner of nearly a hundred slaves, was more desirous that his act be in conformity with the laws, and expressed in his will a "most earnest request that the executors petition the General Assembly for leave to

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<sup>51</sup> MS. Petitions, Hanover County, 1785; Frederick County, 1786, A 6340.

<sup>52</sup> In 1814 Thomas Jefferson expressed his disappointment that the generation who had received "their early impressions after the flame of liberty had been kindled in every breast, and had become, as it were, the vital spirit of every American" had not gone even to the extent of making possible a general emancipation of slaves (Jefferson to Edward Coles, in Randall, *Life of Jefferson*, vol. iii, p. 644).

<sup>53</sup> See quotation of the original will in R. A. Brock's prefatory note to "The Fourth Charter of the Royal African Company," in *Virginia Historical Collections*, vol. vi, p. 18. In 1771 Jonathan Pleasants, a large slave-owner, attempted to provide that his slaves be set free by a will beginning thus: "and first believing that all mankind have an undoubted right to freedom and commiserating the situation of my negroes" (2 Call, 270). William Binford, of Henrico County, set free twelve youthful slaves in 1782 because he was "fully persuaded that freedom is the nat'l right of all mankind" (MS. Deeds of Henrico County, no. 1, p. 421). In 1790 Colonel William Grason manumitted all of his slaves "born after the Declaration of Independence" ("History of the Virginia Federal Convention, of 1788," in *Virginia Historical Collections*, vol. ix, p. 211). For similar expressions see MS. Deeds of Henrico County, no. 3, p. 378; no. 7, p. 131.

<sup>54</sup> Hening, vol. xii, p. 613.



set free all" his slaves.<sup>55</sup> Some masters made their wills in anticipation of an act permitting manumission. A notable instance was the devise made in 1777 by John Pleasants, a Quaker, whose will, when later held valid by the supreme court of appeals, set free several hundred slaves.<sup>56</sup> The contingency upon which this devise of freedom in futuro was based was that "the laws of the land . . . admit them to be set free without their being transported out of the country."

A still more novel instance of anticipating action by the legislature was the devise by Gloister Hunnicutt, of Sussex County, of six slaves to the Monthly Meeting of the Society of Friends, to be manumitted by such members as the meeting should appoint. In passing upon the validity of this will, recorded two years prior to the act of 1782 permitting manumission, the supreme court said: "He knew the existing laws forbade it and that his society had been anxiously endeavoring to procure an enabling statute for that purpose from the legislature; which was generally believed would shortly be obtained." Counsel, in defending the legality of the will, observed that the testator must have known "that a sentiment existed in the country very favorable to the passage of such a law."<sup>57</sup>

In the forefront of the movement which culminated in the repeal of restrictions upon the right of private manumission were two religious sects—the Quakers and the Methodists. Many Quakers in Virginia had been owners of slaves up to the period of the Revolutionary War, but they were among the first to recognize and admit fully the humanity of the negro and the injustice of depriving him of his right to freedom. Committees of their meetings were appointed "to labor with such Friends as still hold their negroes in bondage, to convince them, if possible, of the

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<sup>55</sup> Hening, vol. xii, p. 612; MS. Petitions, Henrico County, 1886, A 8990. By special acts of legislation in 1787 both the above-mentioned wills were made effective (Journal of the House of Delegates, 1786, p. 23. Cited as House Journal).

<sup>56</sup> 2 Call, 270; Brock, p. 17.

<sup>57</sup> Charles et al. v. Hunnicutt, 5 Call, 311, 312.

evil of that practice and inconsistency with our Christian profession."<sup>58</sup> The few members who clung to their slaves did so at the price of being disowned by their society.<sup>59</sup> The growing body of Methodists likewise showed themselves the friends of the negro, and many of them, like the Quakers, refused to own or sell slaves. In the Methodist annual conference held at Baltimore in 1780 this question was put to the conference: "Does this Conference acknowledge that slavery is contrary to the laws of God, man, and nature, and hurtful to society; contrary to the dictates of conscience and pure religion, and doing that which we would not others should do to us and ours? Do we pass our disapprobation on all our friends who keep slaves, and advise their freedom?" The answer was, "Yes."<sup>60</sup> Philip Gatch, a slave-owning Methodist of Powhatan County, was one among many of these people who acted according to the advice of their society in a very short time after it was given.<sup>61</sup> The Methodists as well as the Friends exerted an influence upon legislation by memorials to the legislature reiterating their opposition to slavery.<sup>62</sup>

Probably these two societies, the Friends and the Methodists, deserve to rank first in the work of advancing the cause of manumission from genuine altruistic motives. They sought to make manumission lawful because they were willing to take the negro within the scope of the doctrine of equal rights and natural freedom. But the Baptists and Presbyterians were then striving to gain for the whites freedom of religion and freedom of conscience; hence they too were consistent advocates of the measure by

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<sup>58</sup> MS. Minutes of Fairfax Monthly Meeting, 1776-1802; MS. Minutes of Warrenton and Fairfax Quarterly Meeting, 1776-1787, *passim*; S. B. Weeks, *Southern Quakers and Slavery*, p. 211 et seq.

<sup>59</sup> MS. Minutes of Hopewell Monthly Meeting, 1777-1791, p. 184; MS. Minutes of Fairfax Monthly Meeting, 1777-1791, pp. 42, 65.

<sup>60</sup> W. W. Bennett, *Memorials of Methodism in Virginia*, p. 131.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Letters and Other Writings of James Madison*, vol. iii, p. 124; cited as *Madison's Writings*. See Weeks on the prominence of Quakers and Methodists among the eighty members of the Virginia Abolition Society in 1791 (*Southern Quakers and Slavery*, p. 213).

which restraints were to be removed from the will and conscience of a slave-owner who felt moved to set free his slave for conscience' sake. Furthermore, without regard to church affiliations, there was a class of young men who, according to a distinguished French traveller, "were almost all educated in principles of sound philosophy and regarded nothing but justice and humanity."<sup>63</sup> To this younger set of men, who represented the liberal ideas of the English and French thought of that time, and prominent among whom was Thomas Jefferson, is due much of the credit for the support in the legislature of the proposition which was enacted into law in May, 1782, bearing the title, "An act to authorize the manumission of slaves."<sup>64</sup>

To a certain class of those persons who demanded a revision of the laws respecting the negroes the law of 1782 was only a partial victory. The object sought by persons of that class was the freedom of the negro and not the greater freedom of the white master; hence they were now as ready to support a plan of general emancipation as they had been to promote the progress of manumission. In 1785 a petition was presented to the legislature asserting it to be the firm conviction of the petitioners that slavery is contrary to the principles of the Christian religion and an express violation of the principles upon which our government was founded.<sup>65</sup> Several months later seventeen citizens of Frederick County petitioned for the gradual emancipation

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<sup>63</sup> F. J. Chastellux, *Travels in North America in the years 1780-82*, vol. ii, pp. 196, 197.

<sup>64</sup> "Be it enacted That it shall hereafter be lawful for any person by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal attested and proved in the county court by two witnesses, or acknowledged by the party in the court of the county where he or she resides, to emancipate and set free his or her slaves, or any of them, who shall thereupon . . . enjoy as full freedom as if they had been particularly named and freed by this act" (Hening, vol. xi, pp. 39, 40).

<sup>65</sup> House Journal, November 8, 1785, p. 27. This petition urged not only emancipation, but also "the strengthening of our government by attaching to its support by ties of interest and gratitude" the freedmen. Apparently, enfranchisement of the freedmen was within its scope.

of slaves, reasoning that "liberty is the birthright of mankind, the right of every rational creature."<sup>66</sup>

These propositions met with very strong protest from those who had opposed the passage of the manumission act and who were already preparing to make a fight for its repeal. Counter petitions and remonstrances were received by the Assembly as soon as were the petitions.<sup>67</sup> In addition to remonstrating against proposed plans of emancipation, the petitioners urged the repeal of the law authorizing manumission.<sup>68</sup>

In the issue thus joined the balance of power was held by the class of persons who had supported the passage of the law of 1782 with the view to removing restraints upon the will of the master for the sake of the master's freedom. Neither the proposition for emancipation nor the project for the repeal of the law authorizing manumission could command their support. Persons of this class were as much opposed to hampering the property rights of the master by denying to him the right to dispose of slaves at will as they were to compelling him to relinquish his title to slaves. The emancipation schemes and the projects to prohibit again the manumission of slaves failed of enactment. Hence, on compromise ground between two extreme views, the act authorizing manumission remained on the statute book, and represented the policy to which the State remained for many years firmly committed.<sup>69</sup>

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<sup>66</sup> MS. Petitions, Frederick County, 1786, A 6340. Madison, in a letter to Jefferson of January 22, 1786, says that "several petitions (from Methodists, chiefly) appeared in favor of a gradual abolition of slavery" (Madison's Writings, vol. i, p. 217).

<sup>67</sup> MS. Petitions, Brunswick County, 1785, A 2901; House Journal, 1785, p. 30; Madison to Washington, November 11, 1785, in Madison's Writings, vol. i, p. 200.

<sup>68</sup> Petitions of this kind were received by the legislature from the counties of Brunswick, Amelia, Mecklenburg, Halifax, and Pittsylvania (House Journal, 1785, p. 91; MS. Petitions, A 2901). A petition from Hanover County, signed by one hundred and forty-four citizens, and one from Henrico, signed by one hundred and twenty citizens, praying for the repeal of the act of 1782, were sent to the legislature in 1784 (MS. Petitions, Hanover County, A 8124; Henrico County, A 8971).

<sup>69</sup> House Journal, 1785, p. 91. The vote against repeal was 53 to 35.

The removal in 1782 of restraints upon manumission was like the sudden destruction of a dam before the increasing impetus of a swollen stream. The free negro population in the State at that time—probably less than 3000, but the product of a century and a quarter's growth—was more than doubled in the space of two years. Instances of manumission, often of large numbers of slaves, became frequent.<sup>70</sup> In eight years after the act became effective the number of free colored persons rose from less than 3000 to 12,866.<sup>71</sup> By 1800 the number had increased to 20,000; and according to the census of 1810 it was over 30,000.

The principles of natural rights and the consent of the governed had only a year before the passage of the enabling act received a triumph in the victory of the American and French armies at Yorktown, and many a slave-master now seized the opportunity to follow those principles to their logical conclusion by manumitting every slave in his possession, whether one or one hundred. In 1782 William Binford and Robert Pleasants, of Henrico County, manumitted respectively twelve and ninety slaves. Most of them were of an age to be very valuable, but young and old were set free because of a "conviction and persuasion that freedom is a natural right."<sup>72</sup> Joseph Hill, of Isle of Wight County, gave expression to his views in his will of March 6, 1783, as follows: "I . . . after full and deliberate consideration, and agreeable to our Bill of Rights, am fully persuaded that freedom is the natural life of all mankind . . .

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<sup>70</sup> Cf. Brock, p. 19.

<sup>71</sup> In 1835 William Jay wrote as follows: "In 1782, Virginia repealed her restraining law and in nine years 10,000 slaves were manumitted" (Slavery in America, p. 101). In 1796 St. George Tucker called attention to the fact that "there are *more* free negroes and mulattoes in Virginia alone than are to be found in the four New England states and Vermont in addition to them. The progress of emancipation in this state is, therefore, much greater than our *Eastern* brethren may at first suppose. There are only 1087 free negroes and mulattoes in the states of New York, New Jersey, and Pennsylvania more than in Virginia" (A Dissertation on Slavery, p. 72 n.).

<sup>72</sup> MS. Deeds of Henrico County, no. 1, p. 42.

do hereby emancipate and set free all and every of the above-named slaves."<sup>73</sup>

Every negro who fought or served as a free man in the late war was given in 1783 a legislative pledge of the utmost protection of the State in the enjoyment of the freedom he had helped to gain;<sup>74</sup> and a slave who could prove any honorable service rendered by him to the American cause was freed by special act and at the expense of the State.<sup>75</sup> Aberdeen, a slave who had helped forward the cause of liberty "by his long and meritorious service in the lead mines,"<sup>76</sup> and "Caesar, who entered very early into the service of his country and continued to pilot the armed vessels of the state during the late War,"<sup>77</sup> were set free at public expense. Slave-owning Quakers who were reluctant to manumit their slaves were urged by their society to extinguish their titles in human chattels.<sup>78</sup> The labor supply being abundant from 1782 to the end of the century, mercenary masters were

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<sup>73</sup> MS. Deeds of Isle of Wight County, no. 15, p. 122. Quoted from B. B. Munford, *Virginia's Attitude toward Slavery and Secession*, p. 105. In 1797 Richard Randolph, jr., of Prince Edward County, manumitted his slaves "in whom my countrymen by their iniquitous laws in contradiction of their own Declaration of Rights have vested me with absolute property" (MS. Wills of Prince Edward County, 1797; H. A. Garland, *The Life of John Randolph*, of Roanoke, vol. i, p. 67).

<sup>74</sup> Hening, vol. xi, p. 308; St. G. Tucker, *A Dissertation on Slavery*, p. 20. Compare below, pp. 110, 111, 111 n.

<sup>75</sup> William Boush and Jack Knight, and Saul, "who avoided the rocks upon which so many negroes wrecked when the trumpet call pronounced his freedom if he would turn upon his master," were all set at liberty by the State because of their services in the cause of liberty (Hening, vol. xiii, pp. 103, 619). The slave James, a spy or secret agent of Marquis Lafayette in his Virginia campaign, received favorable consideration by the Assembly (MS. Petitions, New Kent County, 1786, B 4051).

<sup>76</sup> Hening, vol. xi, p. 309 (1783).

<sup>77</sup> Ibid., vol. xiii, p. 102 (1789).

<sup>78</sup> In 1788 it was inserted in the Friends' Discipline "that none amongst us be concerned in importing, buying, selling, holding, or overseeing slaves, and that all bear a faithful testimony against the practice." In 1785 the following query was put before the delegates to the Upper Quarterly Meeting: "Do any Friends hold slaves and do all bear a faithful testimony against the practice?" In 1796 it was reported at a meeting that there was no longer complaint of Friends' holding slaves when they could be lawfully liberated (Weeks, *Southern Quakers and Slavery*, pp. 212, 214).

often easily induced by the slaves themselves, or by a philanthropic person in behalf of the slaves, to grant deeds of manumission in consideration of a money payment. This period from 1782 to 1806 was the time when manumission was most popular in Virginia, and is unique in the history of slavery in the State as being the only period when manumission went on at a rapid rate without legal restraint.

Public opinion, however, was by no means unanimous as to the wisdom of manumission or as to the expediency of permitting the practice to go on without some legal restriction. Very soon after the act of 1782 took effect, lessons learned from experience with a free negro element began to cast a tremendous weight in the balances on the side of the reactionaries, who lost no opportunity to point out the evil results of manumission.<sup>79</sup> Almost a hundred years previously, manumission was for the first time restricted by law, because free negroes were unproductive and because they incited slaves to steal and to rebel.<sup>80</sup> Throughout the long period which intervened between that experience and the close of the Revolutionary War the free negro was almost a negligible social factor, and afforded little reminder of the real character of a large and growing free negro element in a population constituted as was that of Virginia. With the old restraints upon manumission removed, two years trial of the freedmen was sufficient to convince many persons that "free negroes are agents, factors and carriers to the neighboring towns for slaves, of property by them stolen from their masters and others."<sup>81</sup> Three years later the opponents of manumission declared it to be "a very

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<sup>79</sup> MS. Petitions, 1784, A 8124; A 8971; A 2901. A petition from Accomac County, in June, 1782, signed by forty-five persons, assigned four reasons why the slaves of persons who had made their wills before 1782 should not be set free: (1) Manumitted slaves had helped unmanumitted slaves to join the British; (2) It would depreciate the value of slave property and thus lessen revenue; (3) Manumission should be preserved solely as a means of rewarding slaves for good conduct; (4) Free negroes easily become charges upon the public (MS. Petitions, Accomac County, 1785, A 11).

<sup>80</sup> See above, p. 51.

<sup>81</sup> MS. Petitions, Hanover County, 1784, A 8124; Henrico County, 1784, A 8971.



great and growing evil," and, failing to get a prohibitive measure passed, they proposed the plan of compelling every negro to leave the State within twelve months after the date of his manumission.<sup>82</sup> The plan was not adopted, but free negroes were forbidden by an act of 1793 to come into the State.<sup>83</sup>

Much difficulty was soon experienced in discriminating between slaves fraudulently passing as free negroes and negroes actually free. The right of free negroes to go and come and to pass to and fro in a community without hindrance or question proved to be a cloak behind which runaway slaves escaped detection.<sup>84</sup> An attempt to regulate the evil by strict registration requirements only augmented it;<sup>85</sup> free negroes treated their registers or "free papers" as if they were transferable, and escaping slaves used them to conceal their identity.<sup>86</sup> Enterprising slaves even forged such papers, or secured them from white persons who made a practice of forging freedom certificates and supplying slaves with the means of escape.<sup>87</sup>

All these things had been operating to effect a change in sentiment adverse to manumission when an attempted insurrection of slaves in Richmond, led by a slave named

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<sup>82</sup> K. M. Rowland, *The Life of George Mason*, vol. ii, p. 201. For failure to leave they were to be sold at public auction. The proposition followed closely the law passed in 1691. Unlike that law, however, it contained no provision for requiring the master to pay the expenses of transporting the manumitted slave.

<sup>83</sup> Hening, vol. xiv, p. 239. Any citizen might arrest a violator of this law and take him before a justice, who was empowered "to remove every such free negro or mulatto . . . into that state or island from whence it shall appear he or she last came."

<sup>84</sup> *Virginia Gazette and the American Advertiser*, July 5, 1783. "Reward: Ran away from the subscriber a mulatto man slave named Jack a crafty fellow . . . he has a forged pass to pass for a free man" (*ibid.*, October 16, 1784).

<sup>85</sup> Hening, vol. xiv, p. 238.

<sup>86</sup> *Ibid.*, vol. xv, p. 78.

<sup>87</sup> *Ibid.*, vol. xiv, p. 365. Any person "aiding or abetting in forgery of writings whereby a slave or servant of another may go free" was liable to a penalty of two hundred dollars and one year's imprisonment. Ishmael Lawrence was indicted, found guilty, and fined only ten dollars by a Henrico County court in 1795 for "forging uttering and distributing freedom papers or Deeds of emancipation to runaway slaves" (MS. Orders, no. 6, p. 514).



Gabriel, set the white people of the State to thinking on the dangers from a partial subjection of a servile race.<sup>88</sup> While the evidence showed but little direct or criminal connection of free negroes with the plot,<sup>89</sup> it revealed the fact that barbecues, fish-feasts, and "preachings," at which the free negro was known to be a prominent figure, had furnished the occasion for arranging the plot. This fact and testimony that Methodists, Quakers, and Frenchmen, all of whom had been favorable to manumission, were to be spared by the insurgents<sup>90</sup> were convincing that the mere presence in a community of a manumitted negro was a source of danger.

On December 31, 1800, the year of the Gabriel insurrection, the legislature, behind closed doors, passed the following resolution: "That the Governor be requested to correspond with the president of the United States on the subject of purchasing lands without the limits of the United States whither persons obnoxious to the laws or dangerous to the peace of society may be removed."<sup>91</sup>

The obnoxious and dangerous persons described here were not criminals or seditious aliens, as might be supposed, but "free negroes and mulattoes including those who may hereafter be emancipated."<sup>92</sup> At the time this resolution was passed there were upwards of twenty thousand persons in Virginia included within its scope; hence persons who viewed the growth of the free negro population with alarm

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<sup>88</sup> This attempt to massacre the white inhabitants of Richmond was called the Gabriel Insurrection. See *The Richmond Recorder*, April 6, 9, 1803; R. R. Howison, *A History of Virginia*, vol. ii, pp. 390, 391.

<sup>89</sup> "A man named Samuel Bird, a free mulatto of Hanover town was arrested on suspicion of being concerned in the conspiracy of the negroes; he . . . was finally discharged for want of evidence, it being decided that people of his own color, in slavery, could not give testimony against him. His son, a slave, was condemned and executed yesterday" (*Writings of James Monroe*, ed. by Hamilton, vol. iii, p. 215).

<sup>90</sup> *Richmond Recorder*, April 9, 1803.

<sup>91</sup> Documents of the House of Delegates, no. 10, 1847-1848, cited as House Documents; A. Alexander, *A History of Colonization on the Western Coast of Africa*, p. 63.

<sup>92</sup> *Writings of Monroe*, vol. iii, p. 20.

began to realize that restrictions upon the manumission of slaves could not now afford complete relief from the menace of the free negro. The resolution of the legislature was the starting-point of the colonization movement in Virginia and, in fact, in the United States. Governor Monroe, acting upon the request made of him by the resolution, promptly communicated with President Jefferson, and in a lengthy correspondence which followed, opinions were given and received of the comparative value of the southwestern frontier, the West Indies, and Africa as a place for a colony of these persons who were obnoxious to the laws and the peace.<sup>93</sup>

While colonization ideas were being born, new and unusually stringent measures for keeping watch over and controlling the actions of free negroes were enacted. They were forbidden to move from one county or town to another on penalty of being arrested and imprisoned as vagrants.<sup>94</sup> The laws concerning the migration of free negroes into the Commonwealth were declared defective and in need of revision, and more exacting registration requirements were enacted.<sup>95</sup> The laws of evidence were changed so that a slave was a good witness in pleas of the Commonwealth against a free negro.<sup>96</sup> A strong public guard to be stationed at Richmond was considered by the Assembly to be expedient for the public safety "in the present crisis of affairs."<sup>97</sup>

The prospect of removing the free negroes was, however, not yet deemed so promising as to cause persons to lose sight of the necessity of reducing the enormous rate of increase in the free negro population by closing the avenue of escape from slavery to freedom. In the legislative session of 1804-1805 the state of public opinion upon the sub-

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<sup>93</sup> Writings of Monroe, vol. iii, pp. 201-217, 292; The Writings of Thomas Jefferson, ed. by Ford, vol. iv, pp. 419-422; House Documents, no. 10, 1847-1848.

<sup>94</sup> Hening, vol. xv, p. 301 (1801).

<sup>95</sup> Ibid., vol. xv, p. 301.

<sup>96</sup> Ibid., vol. xv, p. 300.

<sup>97</sup> Ibid., vol. xv, pp. 295, 296; Howison, vol. ii, pp. 388-393; House Journal, 1800-1809, pp. 47, 48.

ject of manumission was reflected in a vigorous debate on the floor of the House on the merits of a proposition to abolish the right of private manumission altogether.<sup>98</sup> The speakers who favored a restriction of the privilege seemed to recognize the difficult task before them of overcoming a strong presumption against legislative interference with an individual right enjoyed since the close of the Revolution. "It is not the natural rights of individuals," they asserted, "to dispose of his own property in every case. . . . It is a moral maxim that no man can appropriate his property to any purposes which may injure the interest of others. . . . Whoever emancipates a slave may be inflicting the deadliest injury upon his neighbor. He may be furnishing some active chieftain of a formidable conspiracy." Vivid illustration of and support for the argument were freely taken from the recent insurrections in Santo Domingo as well as from those in the State.<sup>99</sup> An additional "power of combining," it was said, was placed in the hands of slaves by giving to them the "right of locomotion." "What should we say of a man who having his mortal foe bound at his feet sets him at liberty and plants a stiletto in his hand?"

A second ground of attack was occupied by matching against the property-rights defense of manumission an argument for economizing revenue by checking a reckless destruction of property in slaves. The members of the House were asked to consider the loss to the State in revenue incurred by the manumission of twenty thousand slaves since 1782. A third argument was in refutation of the strongly entrenched opinion that the proposed measure would violate "the rights of conscience." "What respect is due," asked Smyth, of Wythe County, "to the conscience of that man who, after having made all the use he could of his slaves does not hesitate to deprive his wife and children of their labor?"

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<sup>98</sup> Richmond Enquirer, January 15, 1805.

<sup>99</sup> A speaker in debate before the House read portions of the history of the insurrection of Santo Domingo (Richmond Enquirer, January 15, 1805).

With equal skill the defenders of the privilege of manumission matched arguments with the opposition. They affirmed that the loss in revenue incurred by manumission was smaller than would be the loss of a single day occupied by the legislature in considering the mass of petitions which would pour in upon that body, as they poured in upon the legislatures before the act of 1782, should the restrictive measure carry. They emphasized also the fact that there was "a vast number of people who labor under scruples of conscience and think it wrong to keep their fellow creatures in slavery. . . . These men consider their religion as the law of God; and if we pass this bill we shall place them between two contrary and conflicting laws."

Moreover, the proposed measure, they said, would not only be unwise policy, but would also be in violation of the constitution. "The first clause says that all men are by nature equal and independent. Already we have violated this declaration, but the present measure will do so still more; for . . . the last clause declares that conscience ought to be free."

Finally, what better safeguard against insurrection could there be than the power in the hands of every slave-master to reward with freedom his faithful and loyal slaves? "What reward is more seductive than the acquisition of freedom? . . . Suppose a servant knows that some harm is to happen to his master, can he have a stronger incitement to inform him of it and put him upon his guard than the prospect of emancipation?"<sup>100</sup>

When the vote which determined the fate of the bill was taken, it stood 77 against and 70 in favor of its becoming law. The editor of the *Enquirer* avowed his disappointment that the measure, "in spite of the imperious policy which dictated its adoption was rejected," and expressed a hope "that some future Legislature will have the prudence to administer the suitable remedy."<sup>101</sup>

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<sup>100</sup> *Richmond Enquirer*, January 15, 1805.

<sup>101</sup> *Ibid.*

In the next annual session of the legislature there were not lacking those who shared the views of the editor on the matter of reopening the question in another effort to administer a remedy. Fears were expressed by some members that free and open discussion was dangerous, but in spite of these warnings a bill for taking from masters the right to free slaves was introduced and debated with much zest.<sup>102</sup> The events connected with the Gabriel attempt at insurrection were again recalled and associated with the idle and vicious habits of free negroes. A friend of the bill declared that "these blacks who are free obtain a knowledge of facts by passing from place to place in society; they can thus organize insurrection. . . . It may be proven that it is the free blacks who instil into the slaves ideas hostile to our peace."<sup>103</sup> Principles of policy and considerations of safety were no longer to be brushed aside by arguments based upon the rights of man.<sup>104</sup>

When the division came, the bill was lost by a vote of 75 to 73.<sup>105</sup> But the full strength of the party in favor of restricting manumission was not shown in this vote, which was a test only upon the question of abolishing the right altogether. There was apparent agreement that drastic police measures were necessary, and but very little objection to placing free negroes under any surveillance and restriction that seemed to be necessary for the safety of society; but a majority was held intact against abolishing the right of manumission only because it believed that the measure infringed the rights of private property and "that the conscience of a dying man ought not to be deprived of the momentary comfort emancipation of his slaves would produce."<sup>106</sup> The objectionable features could, however, be avoided by approaching the question from its other side,

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<sup>102</sup> Virginia Argus, January 17, 1806.

<sup>103</sup> Ibid.

<sup>104</sup> A speaker affirmed that he was not less friendly to "the rights of man" than others who opposed the bill, but that he advocated it from policy (Virginia Argus, January 17, 1806).

<sup>105</sup> House Journal, 1805-1806, pp. 68, 77.

<sup>106</sup> Virginia Argus, January 17, 1806.

that is, by leaving unrestrained the will of the master and restraining the will of the slave with an imposition of such conditions upon freedmen as would make liberty undesirable. Such a plan had been adopted in 1691, and had been proposed in 1787. The device met with the approval of this Assembly, and an act was passed by which all slaves manumitted after May 1, 1806, were required to leave the State within twelve months from the time their freedom accrued, or, if under age, from the time they reached their majority.<sup>107</sup>

In 1784 a vote taken in the House of Delegates showed that only one third of the members of that House were then in favor of the absolute prohibition of the manumission of slaves. By 1806 this minority had made such gains that an accession of only two votes would have transformed it into a majority. It is a significant fact that when the opponents of the policy of permitting private manumissions seemed so near to victory, almost all concerted efforts to repeal the law of 1782 came to an end. The law of 1806 was the last important change in the policy of the State respecting the slave-owner's right to free a slave. The absence after 1806 of a strong demand to curb the power of a master to convert his slave into a free negro was due chiefly to two causes.

In the first place, the act of 1806 prescribing banishment for any slave thereafter set free was regarded as an indirect restriction upon the will of the master; hence it afforded to those who had been urging the repeal of the act of 1782 a measure of satisfaction. It promised to bring about the results which the opponents of manumission desired without

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<sup>107</sup> The act, being a restriction in disguise upon manumission, was included as section 10 in an act concerning slaves. It declared that "if any slave hereafter emancipated shall remain within this Commonwealth more than twelve months after his or her right to freedom shall have accrued he or she shall forfeit all such right and may be apprehended and sold by the overseers of the poor for any county or corporation in which he or she shall be found for the benefit of the poor of such county or corporation" (Hening, vol. xvi, p. 252). Section 10 was a Senate amendment to the act concerning slaves, and was agreed to by the House by a vote of 94 to 65 (House Journal, 1805-1806, p. 77).

a direct interference with jealously guarded property rights and without hindrance to freedom of conscience.<sup>108</sup>

In the second place, the act of 1806 represented a new idea—that of removing free negroes from the State. As the free negro population increased, a prohibition upon manumission was seen to be of diminishing importance as a means of coping with the problem. From 1782 to 1806 strenuous efforts were made to limit the power of masters to recruit the free negro population from the slave class. After 1806 the strength of the opposition to the growth of the free colored class was directed mainly to removing or colonizing that class of the population. The question of colonization, as we have seen, assumed an aspect of importance as a consequence of a resolution of the state legislature in 1800. The act of 1806 was the first actual law of a long succession of laws enacted with a view to realizing the ideas set forth in the House resolutions of the first years of the century.

A fundamental defect in the law of 1806 was its failure to provide any definite place to which the freed slaves might go. As an immediate consequence of spasmodic attempts to enforce the law and of fears on the part of manumitted slaves that the law would be enforced against them, a noticeable egress of negroes took place from Virginia to the Northern States and to the States bordering on Virginia on all sides. Citizens of Maryland soon began to make loud complaint to their legislature. "Virginia," they said, "has passed a law [expelling certain free negroes] and many of her beggarly blacks have been vomited upon us."<sup>109</sup> Within

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<sup>108</sup> "That Government would be justly chargeable with the extreme of despotism that should attempt, without necessity, to interfere with the kind and generous feelings of the human heart," asserted a committee of the House of Delegates in its report in 1829 favorable to the expediency of continuing the policy of removing free negroes and of permitting masters to manumit slaves (*African Repository and Colonial Journal*, vol. iii, p. 54. Cited as *African Repository*).

<sup>109</sup> MS. Petitions to House of Delegates, in Maryland Historical Society, portfolio 7, no. 28; J. R. Brackett, *The Negro in Maryland*, pp. 176, 177.

a year after the Virginia act was passed the legislatures of three different States—Maryland,<sup>110</sup> Kentucky,<sup>111</sup> and Delaware<sup>112</sup>—had passed countervailing acts forbidding free negroes to come in from other States to take up permanent residence. Other States followed the lead of the three already named, and passed laws excluding free negroes or imposing upon their admission such rigid requirements as to render their coming impracticable. Ohio,<sup>113</sup> Indiana,<sup>114</sup> Illinois,<sup>115</sup> Missouri,<sup>116</sup> North Carolina,<sup>117</sup> and Tennessee<sup>118</sup> had passed some such law within twenty-five years after the Virginia act of 1806. The people of Mercer County, Ohio, refused to allow John Randolph's three hundred and eighty-five negroes, who left Virginia in compliance with the laws, to remain even for three days upon land purchased for them in that county, although these negroes could comply with Ohio's law requiring of emigrant free negroes bond for good behavior.<sup>119</sup> In no State was a cordial welcome held out to Virginia's expatriated negroes. A refugee slave was far more likely to meet with hospitality in the Northern States than was a free negro.<sup>120</sup>

When that portion of the population of Virginia which viewed the residence of the free blacks among them as "an intolerable burden"<sup>121</sup> saw that the removal laws were being

<sup>110</sup> Laws of Maryland, 1806, ch. 56; 1823, ch. 161; Brackett, p. 176.

<sup>111</sup> Acts of Kentucky Legislature, 1807-1808, sec. 3; J. C. Hurd, *The Law of Freedom and Bondage in the United States*, vol. ii, pp. 15, 18; MS. Petitions, Cumberland County, 1815, A 4728.

<sup>112</sup> 4 Delaware Laws, 108; Hurd, vol. ii, p. 77.

<sup>113</sup> Ohio Sessions Laws, ch. 8; Hurd, vol. ii, p. 117.

<sup>114</sup> Hurd, vol. ii, p. 130.

<sup>115</sup> Ibid., vol. ii, p. 135.

<sup>116</sup> Ibid., vol. ii, p. 170.

<sup>117</sup> Revised Code of North Carolina, 107, sec. 54-58, 75-77; J. S. Bassett, *Slavery in the State of North Carolina*, in *J. H. U. Studies*, ser. xvii, nos. 7-8.

<sup>118</sup> Hurd, vol. ii, p. 92. See also *The Richmond Enquirer*, February 19, 1832, speech of Mr. Goode.

<sup>119</sup> *The Liberator*, August 7, 21, 1846.

<sup>120</sup> "If there is one fact established by steadily accumulating evidence it is that the free negro cannot find a congenial home in the United States. He is an exotic among us" (quoted in *De Bow's Commercial Review*, vol. xxvii, p. 731, from *Philadelphia North American*).

<sup>121</sup> MS. Petitions, Prince William County, 1838.



"frustrated by the action of sister states"<sup>122</sup> as well as by the inactivity of local officials in enforcing the banishment provisions, efforts were made to seek a place beyond the United States where free negroes could be colonized. On December 14, 1816, a resolution was adopted in the House of Delegates which strongly urged the importance of colonization, and requested the governor to "correspond with the President of the United States for the purpose of obtaining a territory upon the shores of the North Pacific, or some other place not within any of the States or territorial governments of the United States to serve as an asylum for such persons of color as are now free and may desire the same and for those who may be hereafter emancipated within this Commonwealth."<sup>123</sup> Within a short while after the adoption of this resolution there was organized in Washington the American Colonization Society, and throughout the counties and cities of Eastern Virginia auxiliary organizations sprang up.<sup>124</sup> A state colonization society had headquarters at Richmond in 1831, and had various branches throughout the State.<sup>125</sup> The two most important duties of these societies and their agents were to procure, first, funds for the transportation of free negroes<sup>126</sup> to Africa, and, secondly, free negroes who were willing to be transported there.<sup>127</sup>

From 1820 to 1860 these societies were very active in propagating the colonization ideas. In 1833 they procured from the legislature an annual appropriation of eighteen

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<sup>122</sup> MS. Petitions, Dinwiddie County, 1838, A 5090.

<sup>123</sup> House Journal, 1816-1817, p. 90.

<sup>124</sup> Address of the Rockbridge Colonization Society, in *African Repository*, vol. iii, p. 274; Report of Managers of the Lynchburg Auxiliary Colonization Society, in *ibid.*, vol. iii, p. 202; Memorial of the Richmond and Manchester Auxiliary Colonization Society, in MS. Petitions, Henrico County, 1825, A 9358.

<sup>125</sup> Petition of the Colonization Society of Virginia, in MS. Petitions, Henrico County, 1831, A 9431.

<sup>126</sup> *African Repository*, vol. iii, pp. 280, 281.

<sup>127</sup> "Difficulty has been apprehended in obtaining a sufficient number of emigrants. . . . Many of the free people are either ignorant of the scheme or prejudiced against it. They are suspicious of white men" (Address of Rockbridge Colonization Society, in *African Repository*, vol. iii, p. 279).

thousand dollars for five years to be used in colonizing free negroes in Africa. From this time on for a quarter of a century the state legislature was committed to the plan of colonization as a solution of the free negro problem; and although that plan resulted in repeated failure, it was sufficiently promising to absorb the greater part of the interest of nearly all who wished to check the growth of the free colored class.<sup>128</sup> Between 1836 and 1856, propositions for limiting the power of masters to manumit their slaves were pressed forward with some energy, but were uniformly defeated.<sup>129</sup> The constitutional convention of 1850 evaded the question of limiting manumission by granting to the legislature the power to "impose such restrictions and conditions it shall deem proper upon the power of slave-owners to emancipate their slaves," a power which the legislature had always been understood to have.<sup>130</sup> The law of 1806 was reenacted at various times after its first enactment, with such changes as were deemed necessary to improve its effectiveness, and in 1850 it was embodied in the new constitution and remained a part of the constitutional law of the State till the overthrow of the slavery regime.

The adoption in 1806 of a new policy respecting manu-

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<sup>128</sup> Acts, 1832-1833, p. 14. Large appropriations (\$30,000) were made by the legislature in 1850 and 1853 for the purpose of colonizing the free colored population (*ibid.*, 1849-1850, p. 7; 1852-1853, p. 58). But so few were the numbers of Virginia negroes actually colonized in comparison with the entire free negro population of the State that Virginia colonization may be said to have been an absolute failure. During the three years in which the law of 1850 was in operation only 419 free blacks and slaves were sent from Virginia to Africa, and of the \$90,000 available for colonization purposes only \$5410 was used. Prior to 1854 only 2800 colored persons in all had been sent from Virginia to Africa. After 1853 the annual appropriation of \$30,000 was never consumed upon the transportation of emigrants. For the fiscal year ending October 1, 1858, only \$2100 was expended by the colonization board and only 42 negroes were sent out (Message of Governor Johnson, in House Journal, 1853-1854, p. 15; House Documents, 1859-1860, no. 5, p. 407).

<sup>129</sup> House Journal, 1839, p. 247; 1842-1843, p. 28; 1852-1853, p. 83; 1855-1856, pp. 112, 436; 1857-1858, p. 262; Journals of the Senate of the Commonwealth of Virginia, 1857-1858, p. 668, cited as Senate Journal.

<sup>130</sup> Journal, Acts and Proceedings of the Convention of 1850, p. 327; Constitution of 1850, sec. 3 on Slaves and Free Negroes.

mitted slaves should be considered as the point of division between two stages in the progress of manumission in Virginia. The actual operation of the law was, however, only one of several causes of the decline which occurred about that time in the frequency of manumissions. First among the causes which resulted in a decreased disintegration of slavery early in the century was the growth of an anti-free-negro sentiment which acted as powerfully to determine the action of individual slave-owners as it did to determine legislation. Not a few of these persons were becoming converted to the opinion expressed in the editorial columns of the *Richmond Recorder* that "there never was a madder method of sinking property, a method more hostile to the safety of society than the freak of emancipating negroes."<sup>181</sup> Even from the point of view of the slave's welfare, honest reflection upon the hard conditions—economic, social, and legal—of free negroes, whether they remained in the State or attempted to emigrate, caused masters of benevolent intentions to hesitate long before surrendering a slave to his own care. The feeling of this class of slave-owners was well expressed by Thomas Jefferson in 1814: "Men of this color are by their habits, rendered as incapable as children of taking care of themselves and are promptly extinguished whenever industry is necessary for raising the young. In the meantime they are pests in society by their idleness and the depredations to which this leads them."<sup>182</sup>

In the second place, among the causes of the decline in the frequency of manumissions must be reckoned the restraining effect of the law annexing banishment as an attendant condition. "This law," wrote the Powhatan Colonization Society, "has restrained many masters from giving freedom to their slaves and has thereby contributed

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<sup>181</sup> *Richmond Recorder*, November 10, 1802. This issue contains a lengthy and animated discussion of the vicious character of the free negro and the dangers of manumission.

<sup>182</sup> Randall, *Life of Jefferson*, vol. iii, p. 644. Compare also John Burk's statement in 1804 that "the first loss to be sustained by an emancipation is not the greater bar to this desirable end" (*The History of Virginia*, vol. i, p. 212 n.).

to check the growth of an evil already too great and formidable."<sup>123</sup> Richard Hildreth, writing in 1856, asserts that under the act of 1782 manumissions were very numerous, "and but for the subsequent re-enactment [in 1806] of restrictions upon it, the free colored population of Virginia might now exceed the slaves."<sup>124</sup> A petition to the legislature from the Richmond Colonization Society attributed entirely to this law the decline of four thousand in the decennial increase in the free negro population from the first to the second decade of the century.<sup>125</sup>

The Virginia slaves felt keenly their dependence upon those by whom they were reared and for whom they labored. Many of them preferred to continue as slaves in their master's household rather than incur the risk of being sent homeless into a strange land. Lucinda, a negro woman manumitted about 1812 by the last will of Mary Mathews, refused to be moved to Tennessee with other negroes set free by the same will, deliberately remaining in the State long enough to forfeit her freedom and petitioning the legislature to vest the title to her in William H. Hose.<sup>126</sup> Sam, a negro petitioner, declared to the legislature in 1808 that he preferred slavery to being forced to leave his wife and family, all of whom were slaves.<sup>127</sup> There were many slave-owners who considered the question of manumission solely from the standpoint of the welfare of their slaves, and who were therefore temporarily or permanently prevented from conferring upon them a freedom which would deprive them of their only hope of a lawful support. John Randolph of Roanoke, writing in his will in 1819 concerning his slaves, said, "It has a long time been a matter of deepest regret to me that . . . the obstacles thrown in the way by the laws

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<sup>123</sup> Memorial to Virginia Legislature, in MS. Petitions, Powhatan County, 182(5?), uncatalogued.

<sup>124</sup> The History of the United States, vol. iii, p. 392.

<sup>125</sup> MS. Petitions, Henrico County, 1825, A 9358.

<sup>126</sup> MS. Petitions, King George County, 1813, B 1109.

<sup>127</sup> MS. Petitions, Essex County, 1808, A 5385.

of the land have prevented my emancipating them in my life-time."<sup>138</sup>

Furthermore, many free negroes who owned as slaves in a legal sense their wives and children or their brothers, sisters, and other relatives were after 1806 deterred from setting them free when they contemplated the prospect of seeing their dearest friends banished from the State by an enforcement against them of the limited residence law. For example, a colored man named Frank, who resided in Amelia County, had purchased his wife and three children, and, according to the statement of his white neighbors, had "always intended that they should be *virtually* free, although the law prohibited him from making them actually so without subjecting them to removal from the state."<sup>139</sup> Bowling Clark, a free negro of Campbell County, purchased his wife a few years after the act of 1806 went into operation; but both were declining in years, and both preferred the existing arrangement to one which would have given the wife freedom at the cost of parting husband and wife or of sending both from their home together.<sup>140</sup> Numerous instances could be cited to show that the law annexing banishment as a condition of manumission exerted a powerful effect in restraining the will of black slave-owners.<sup>141</sup>

The third of the causes which deserve notice here in connection with the general decline in the frequency of manumissions in the nineteenth century is a noteworthy change in the economic aspects of slaveholding. The invention of

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<sup>138</sup> The last will and testament of John Randolph of Roanoke set free about three hundred and eighty-five slaves. The document is printed in Garland, vol. ii, p. 150.

<sup>139</sup> In 1809 Frank died, and the only means that remained of saving "Patience, the wife, and Philemon, Elizabeth and Henry, the children of the free black man" from sale into slavery was legislative intervention by private act. The legislature intervened in this case because the purchase by Frank of his family took place before the enactment of the law of 1806. Legislative action was refused in many similar cases of later date (MS. Petitions, Amelia County, 1809, A 768; Acts, 1809-1810, p. 54).

<sup>140</sup> MS. Petitions, Campbell County, 1815, A 3412.

<sup>141</sup> See MS. Petitions, Fauquier County, 1837, A 5859; and below, pp. 92, 93. The imperfect enforcement of the act of 1806, a subject treated elsewhere in this monograph, did not relieve negroes of the fear of the consequences following violation of it.

the cotton gin in 1793 made possible the expansion of the cotton industry in the South. The result of this industrial expansion created a demand for slaves to work in the cotton fields. The abolition of the foreign slave trade in 1808 produced the final condition for the rapid growth of a domestic slave trade which eventually resulted in a rise in prices of Virginia slaves. About 1790, "when slave prices reached the bottom of a twenty years' decline,"<sup>143</sup> the maximum frequency of manumissions was attained, with the exception of the first few months after the manumission act took effect. Conditions in 1794 were such as to lead Washington to say that he believed that slaves would be "found to be a very troublesome species of property ere many years pass over our heads."<sup>144</sup> Any slave-owner having a limited number of acres for tillage might readily become overstocked with slaves and be forced to the alternative of manumitting or selling some of them.<sup>144</sup> In various ways household slaves made demands upon or appeals to their owners for freedom. In competition with these demands was the demand of the slave market. When the competition of the market was weak, as it was in the last quarter of the eighteenth century, the slave had a better opportunity to purchase, or to induce a friend to purchase, his freedom, or to appeal with success to the charity of his owner, than when attractive prices were being offered to owners for their surplus property.<sup>145</sup>

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<sup>143</sup> U. B. Phillips, "The Economic Cost of Slaveholding in the Cotton Belt," in *Political Science Quarterly*, vol. xx, p. 257.

<sup>144</sup> Washington to Alexander Spotswood, November 23, 1794, in *New York Public Library Bulletin*, vol. ii, pp. 14, 15.

<sup>145</sup> Delegates representing slave-owning interests in the constitutional convention of 1829-1830 feared that delegates from western Virginia desired to see slavery taxed out of existence. If slaves were to be taxed more heavily, thought Richard Morris, "Either the *master* must run away from the slaves or the *slave* from the master." Here we see a recognition of the relation between the freeing of slaves and the paying character of slave property (*Proceedings and Debates of the Convention*, p. 116).

<sup>146</sup> In 1792 a negro man living in King William County died, leaving a will which directed that so much of his estate as was necessary be used to purchase the freedom of his son, the property of Benjamin Temple. This illustrates a phase of manumission directly affected by the market price of slaves (*Hening*, vol. xiii, p. 619).

It is important, however, to keep in mind that the change in economic conditions was not a sudden one, and that it was not the sole cause of the decline in the frequency of manumissions. John Fiske overrated the economic phase when he wrote, "After the abolition of the slave-trade in 1808 had increased the demand for Virginia-bred slaves in the states further south the very idea of emancipation faded out of memory."<sup>146</sup> This statement is erroneous both as to the facts and as to the inference that the cause of the change was wholly economic. The personal and human element in the relations of the master and his slaves so often overshadowed the property relation that the disposition which a master would make of his slaves could not be foretold by reference to economic laws.

The change in the economic value of slaveholding ascribed by Fiske to the early part of the century was in fact more potent in producing the second stage in the decline of manumission, which began about 1830, than it was in ushering in the first period of decline in the first decade of the century. No great rise in slave prices came about in Virginia before 1830 as a result of the growth of the cotton industry.<sup>147</sup> As a result of the decided improvement in slavery as an economic system and of the increasing vehemence of attacks made upon slavery by abolitionists, there arose soon after the great slavery debate in the Virginia legislature in 1832 a new school of slavery apologists whose outspoken defenses of slavery as a beneficial economic and political institution represented a new stage in the development of sentiment adverse to manumitting. The man who may be called the founder of this school of proslavery writers was Thomas R. Dew, professor of history and metaphysics in William and Mary College, who reviewed the slavery debate of 1832 and wrote an elaborate defense of slavery entitled "Essay on Slavery." Other writers who followed Dew in defend-

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<sup>146</sup> *Old Virginia and Her Neighbors*, vol. ii, p. 191.

<sup>147</sup> W. H. Collins, *The Domestic Slave Trade of the Southern States*, p. 26 et seq.; W. Jay, *Miscellaneous Writings on Slavery*, pp. 266, 267.



ing slavery upon its merits were George Fitzhugh,<sup>148</sup> Alfred T. Bledsoe, professor of mathematics in the University of Virginia,<sup>149</sup> Rev. Dr. Thornton Stringfellow,<sup>150</sup> and Edmund Ruffin.<sup>151</sup>

The theory advanced by these writers was that the negro occupied his true and proper economic and political sphere in slavery, and that the correct solution of the race problem was not a plan of gradual emancipation, as was urged by a large minority in the legislature of 1832, but a reduction and continued subjection of the members of the black race to slavery. This view differentiates the part of the nineteenth century before 1832 from the part which came between 1832 and 1860, and serves to show by contrast how considerable was the freedom sentiment in Virginia up to 1832. The increase of the free negro population during the decade of 1820-1830 was 10,474. From 1830 to 1840 the increase in that class of the population was only 2500. Prior to the Southampton insurrection and the consequent discussion of the slavery question, prevailing opinion regarded slavery as an evil system to be removed as soon as a feasible method could be devised. It was hoped that by manumission the problem of drawing off a certain part of the colored class for colonization would be solved, and that this plan would finally remove the negroes to Africa. A stronger and more general antislavery sentiment existed in Virginia prior to 1832 than some writers are disposed to admit. The earnestness of the debate and the closeness of the vote on an emancipation project in the legislature in 1832 is wrongly regarded by Edward Ingle<sup>152</sup> as a sort of wild expression of fear created by the Southampton insurrection, and not as an expression of normal sentiment. It is true that the insurrection furnished the occasion for the debate of 1832, but the antislavery sentiments expressed fairly represented

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<sup>148</sup> "Sociology for the South," and "What Shall be done with the Free Negroes?"

<sup>149</sup> "Liberty and Slavery."

<sup>150</sup> "The Bible Argument."

<sup>151</sup> "African Colonization Unveiled."

<sup>152</sup> Southern Sidelights, pp. 265, 266.



honest views which had persisted up to that time. Anti-slavery sentiments had been uttered in the constitutional convention of 1829-1830 by such men as James Monroe.<sup>153</sup> In 1821 Madison declared that the free negroes were "increasing rapidly from manumissions and from offsprings."<sup>154</sup> Again in 1826 he wrote to La Fayette that "manumissions more than keep pace with the outlets provided and that the increase of them is only checked by their [the freedmen] remaining in the country."<sup>155</sup> This obstacle removed and all others would yield to the emancipating disposition." In Madison's opinion, "the tendency was favorable to the cause of universal emancipation."

In contrast with this view expressed by Madison, which is representative of an attitude toward the slavery question quite extensively held before 1832, we may consider the opinion of a pamphlet writer of the decade of the fifties as indicative of the change in sentiment since 1832. Speaking of the mistaken philanthropy of the slave-owners of the period of the Commonwealth prior to 1832, he declared that the soil was then especially favorable to the growth of manumission sentiment. "For slavery had come to be generally considered as an economical and political evil by a large portion of the intelligent slaveholders in Virginia. It was not until after abolition fanaticism of the Northern people had become both active and malignant, and that Professor Dew's excellent 'Essay on Slavery' (the first important defense of the system offered in modern days) had been published that the revulsion began. At the present time, there are few intelligent and well informed persons in all Virginia who do not deem negro slavery to be in every respect a beneficial institution."<sup>156</sup>

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<sup>153</sup> Debates of the Convention, p. 172; Richmond Enquirer, November 5, 1829.

<sup>154</sup> Madison's Writings, vol. iii, p. 240.

<sup>155</sup> Madison's Writings, vol. iii, pp. 275, 540. For petitions signed by large numbers of citizens pleading, in 1827, in the interest of "citizens who may feel disposed to emancipate their slaves," see MS. Petitions, Frederick, Jefferson, and Berkeley Counties, 1827, A 6495.

<sup>156</sup> "Calx," pp. 4, 5.

From what has already been said it should appear clear that the periods in the history of manumission from 1782 to 1865 were marked rather by changes in sentiment than by changes in laws. The act of 1782 authorizing manumission by the will or other instrument of writing remained in full force to the close of the Civil War.<sup>157</sup> By way of comparing the three stages in manumission sentiment under the act of 1782 it may with tolerable accuracy be stated that the chances of manumission of a slave living in Virginia through the generation preceding 1800 were about ten in a hundred; of one living through the period from 1800 to 1832, about four or five in a hundred; and of one living after 1832, about two in a hundred.

On a basis of sentiment or of the frequency with which manumissions occurred there may be said to be three stages in the progress of manumissions during the period of the Commonwealth, but from the standpoint of legal processes and regulations of manumission the period from 1782 to 1865 is but one period.

X The act of 1782 imposed upon slave-owners who manumitted slaves over forty-five years of age the duty of providing for their maintenance, in order that they might not become charges upon the public.<sup>158</sup> In 1792 a revision of the act of 1782 was deemed necessary to the proper protection of creditors. A qualifying clause was appended to the provisions of the original act which made any manumitted slave liable to be taken by execution to satisfy the debts contracted by his former master previous to the date of manumission.<sup>159</sup> In several important cases the supreme

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<sup>157</sup> It seems an inexcusable error on the part of Henry Wilson that he should have asserted in his *History of the Rise and Fall of the Slave Power* that the act of 1782 remained in force for only ten years, and that after its provisions were repealed, "that source of just and humane individual action being forcibly stopped, gradually dried up and ceased to flow" (vol. i, p. 20). See Code (1849), 459 n., for a statement by the compiler that "the right to emancipate has continued ever since [1782]; and the validity and effect of instruments of emancipation have been passed upon in many cases."

<sup>158</sup> See deed executed by Samuel Tinsley, 1792, in MS. Deeds of Henrico County, no. 4, p. 212.

<sup>159</sup> Henning, vol. xiv, p. 128.

court of appeals held that "the right to emancipate slaves is subordinate to the obligation to pay debts previously contracted by express will of the statute."<sup>160</sup> In 1805 certain negroes set free by a deed of gift from their owner were, in pursuance of a decision of the supreme court of appeals, taken in execution for the satisfaction of the debts of the slave-owner's wife, notwithstanding the fact that the negroes belonged to their owner before he married the wife for whose debts the negroes were held.<sup>161</sup> All other forms of property, personal or real, had to be applied to the payment of debts before execution could be made upon liberated slaves; and if the amount of indebtedness remaining could be paid by hiring out the liberated negroes of the debtor, they were deprived of freedom only as long as was necessary to raise the required amount. No statute of limitations could be appealed to by negroes who had been in peaceful possession of their freedom for five, ten, or apparently any number of years to stop an execution upon them for the debts of their owner contracted before the liberation.<sup>162</sup>

Under the provisions of the act of 1782 and of every later revision of that act, manumissions could be made by last will and testament or by other instrument of writing properly attested and proved. Written instruments of manumission other than wills were generally called "deeds of manumission" or "deeds of emancipation." Strictly speaking, such instruments were not deeds, because they imported no transfer of property from one to another, but they bore a close analogy to deeds. Referring to this analogy, a judge of the supreme court of appeals in *Thrift v. Hannah* said: "A deed is a writing *sealed and delivered*. *Proof or acknowledgment* in court is to an instrument of emancipation what delivery is to a deed at common law."<sup>163</sup> In imitation

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<sup>160</sup> *Dunn v. Amey*, 1 Leigh, 465 (1829); *Jincey et al. v. Winfield Administrators*, 9 Grattan, 708 (1853).

<sup>161</sup> *Woodley v. Abby*, 5 Call, 336. See also *Patty v. Colin*, 1 Hening and Munford, 519 (1807).

<sup>162</sup> *Woodley v. Abby*, 5 Call, 336; *Patty v. Colin*, 1 Hening and Munford, 519 (1807).

<sup>163</sup> *Thrift v. Hannah*, 2 Leigh, 330.

of deeds or indentures conveying property from one to another, such instruments of manumission usually stipulated a pecuniary consideration. Even when the act of the master was purely an act of benevolence, it was the practice to stipulate some such nominal consideration as five shillings,<sup>164</sup> one dollar,<sup>165</sup> or five dollars.<sup>166</sup> Deeds of manumission were in frequent use between 1782 and 1800 by persons of very decided antislavery views,<sup>167</sup> as, for example, the Quakers. Though of less frequent occurrence in the deed-books of the nineteenth century, deeds of emancipation were used by free negroes who purchased and set free their relatives and friends, or by masters who agreed with their slaves to set them free upon payment of a certain sum of money.

The most common type of deeds of emancipation is exemplified by the following instrument, taken from the court records of Henrico County:—

To all whom these presents may come know ye, that I Peter Hawkins a free black man of the City of Richmond having purchased my wife Rose, a slave about twenty-two years of age and by her have had a child called Mary now about 18 mo. old, for the love I bear toward my wife and child have thought proper to emancipate them and for the further consideration of five shillings to me in hand paid . . . I emancipate and set free the said Rose and Mary . . . and relinquish all my right title and interest and claim whatsoever as slaves to the said Rose and Mary.

PETER HAWKINS (Seal)<sup>168</sup>

From the standpoint of proslavery men of the nineteenth century, manumission by last will and testament was the method most likely to be abused. It was certainly the method which remained in most common use throughout the entire period of the Commonwealth. When a slave-owner recognized that he was approaching the end of life,

<sup>164</sup> MS. Deeds of Henrico County, no. 2, pp. 569, 574; no. 6, p. 274.

<sup>165</sup> Ibid., no. 7, p. 205.

<sup>166</sup> Ibid., no. 7, p. 454.

<sup>167</sup> Betsey Barlow, who from benevolent motives freed her slaves by deed in 1789, gave them not only freedom but new names: "I set free Jacob and Sarah to whom I give the names Jacob Holland and Sarah Marnick" (MS. Deeds of Northampton County, 1785-1794, p. 291). Manumitted slaves often assumed the surnames of their former owner.

<sup>168</sup> MS. Deeds of Henrico County, 1800, no. 6, p. 78.

he was likely to give serious consideration to his duty to his own slaves, regardless of his views respecting slavery in general. There remained to him only one appropriate way of acknowledging his debt of gratitude for the long, patient, and faithful service of the slaves of his household. Confronted with the alternative of dying ingrate or bequeathing to their servants freedom from bondage, many masters chose the latter course, and down to the Civil War the wills of slave-owners frequently contained such a clause as, "I give unto my negro her freedom on account of her faithfulness of service."<sup>169</sup> Giles Fitzhugh, a descendant of a long line of slave-owners, freed all his slaves by his last will in 1853.<sup>170</sup> A will of manumission sometimes represented a tardy effort or last resort to ease a goaded conscience. John Randolph of Roanoke wrote in his last will, "I give to my slaves their freedom to which my conscience tells me they are justly entitled."<sup>171</sup> Edmund Ruffin, lamenting in 1859 the abuse of testamentary manumissions by slave-owners of "sensitive or feeble minds, or morbidly tender consciences . . . especially of wealthy old men and old women," saw in the motives of such slave-owners a resemblance to the motives appealed to by priests in the dark ages "when inducing rich sinners to smooth and pay their future pass to Heaven.

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<sup>169</sup> MS. Wills of Norfolk County, 1836-1868, p. 66. The will of J. A. Schwartz, of Nottoway County, affords a striking illustration of the way in which the reflections of slave-masters in their last illness often impelled them to acknowledge their debt of gratitude to their slaves while there was opportunity. With his slaves standing around him as he lay upon his death-bed, Schwartz questioned them separately before dictating orally what was intended for his will in respect to them.

"Bob, do you wish to be freed?"

"I am willing to serve you, but I had rather be freed than have another master," said Bob.

"He should be free," answered the master.

When a similar conversation had taken place between Frank and the dying man with a like result, Polly enquired: "What are you going to do for poor me?" "Polly and her children," said he, "should be free" (3 Leigh, 142).

<sup>170</sup> A. Crozier, Virginia County Records, vol. vii, p. 110.

<sup>171</sup> Garland, vol. ii, p. 150. This last act of Randolph, liberating about three hundred and eighty-five slaves, was referred to by opponents of testamentary manumission as "the shocking example of John Randolph" (Ingle, p. 266).

Such emancipations have been made in great amount and in many cases, and not only by the unquestionably benevolent and pious . . . but also by persons whose lives and actions, both as men and as masters, had indicated anything but piety, benevolence, or even a just and good treatment of their slaves."<sup>172</sup>

The last will and testament was naturally the legal instrument selected by a slave-owner of moderate antislavery views who wished to retain the services of his negroes during his life, but desired at the same time to guarantee them, by providing for their freedom at his death, against being sold with his estate or separated from their homes and each other. The testamentary method served equally well the master who wished to "lend" his slaves to his heirs for a fixed period during the lifetime of the heirs or until the slaves should arrive at a certain age.<sup>173</sup> "Manumission in futuro" was the term applied to the act of a master whose will provided for the freedom of his slaves at a specified time after his death.

Slave-owners making wills of manumission in futuro often attempted to affix conditions to the possession of freedom by their slaves. A condition precedent to the manumission was held by the courts to be valid, that is to say, a master by his will could make the freedom of a slave depend upon some act or condition of the slave or upon some event, if such act, condition, or event was to be determined before the slave's freedom began. A condition subsequent was invalid. If a master manumitted his slave upon condition that the slave serve him for hire or otherwise after acquiring freedom or that the negro's children be slaves, the manu-

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<sup>172</sup> E. Ruffin, *African Colonization Unveiled*, p. 9.

<sup>173</sup> James Johnson, of Louisa County, made his will in 1785, bequeathing to his wife all his negroes during her lifetime. After her death the negroes were to be set free upon attaining the age of twenty-one years (10 Leigh, 277). John E. Taylor in his last will said: "I lend my slaves Margaret, Bridget, Ben, George, John and Sandy to my wife Keziah and my daughter Margaret during their natural lives, but in the event of the death of my said wife and daughter, I do hereby emancipate them and their issue forever" (MS. Wills of Norfolk County, 1836-1868, p. 25).

mission was valid, but the conditions stipulated were of no effect or force.<sup>174</sup> Any effort to control or direct the conduct of a negro after manumission or to put him in a status intermediate between slavery and freedom was futile.<sup>175</sup> Some wills conditioned the freedom of slaves upon the choice or election of the slaves when they arrived at certain ages or when certain conditions were fulfilled. Until 1858 such wills were treated by the courts as valid.<sup>176</sup> In the case of *Baily et al. v. Poindexter* the supreme court of appeals, contrary to the sentiment of the legal profession, ruled that slaves had no legal capacity even to choose to be free, and that allowing them such choice did not manumit them or provide for their manumission.<sup>177</sup>

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<sup>174</sup> *Minor*, vol. i, p. 167. John Fitzgerald of Petersburg bequeathed freedom to a female slave with the reservation that her children should be slaves. When the instrument came for construction by appeal to the supreme court in 1827, it was held that the children of the woman set free were free and in no way under the control of their mother's former owner (*Fulton v. Shaw*, 4 *Randall*, 597). It was different in the case of children born of a slave-woman at any time before she had a right, according to the provisions of the will, to her freedom. Such children were slaves (*Maria et al. v. Surbough*, 2 *Randall*, 228).

<sup>175</sup> A will recorded in 1847, reading "I bequeath my negro girl Eliza to daughter Jimmey after the decease of my wife, not as a bond slave, but to be under her care and tuition" was held to be void of effect even to manumit the slave girl (2 *Grattan*, 227).

<sup>176</sup> *Pleasants v. Pleasants*, 2 *Call*, 319; *Elder v. Elder's Executor*, 4 *Leigh*, 252; *Dawson v. Dawson's Executor*, 10 *Leigh*, 602.

<sup>177</sup> 14 *Grattan*, 132. See also *Williamson v. Coalter's Executors*, 14 *Grattan*, 394. *Minor*, vol. i, p. 160.

## CHAPTER IV

### THE LEGAL STATUS OF THE FREE NEGRO

The legal status of free individuals is involved in the usual two-fold relation of persons to the state,—that of receiver of protection and security from the government, and that of active participant in its affairs. Considering the status of the free negro in this double relation, the question which first demands an answer is, What protection was afforded him in rights of property and in the enjoyment of life and liberty?

\* The common-law right to own and to alienate property was at an early date recognized as belonging to free negroes, and it suffered fewer limitations in their possession than any other of the rights generally regarded as fundamental to a free status. In the "order-book" of the county court of Accomac for 1632–1640 is an order "that Francis the negare shall have his chist wch he clameth now being in the house of John Foster in case there be noe lawful reason shown to the contrary betwine this and the next courte alledged."<sup>1</sup> Contracts involving the recognition of full rights of free negroes to personal property were recorded in the county courts as early as 1645.<sup>2</sup> Among the early Virginia land patents are a number representing grants to negroes of from fifty to five hundred acres to be held in fee simple. The first of such grants made to a negro of which we have any record was one of two hundred and fifty acres to Anthony Johnson of Northampton County in 1651 as "head-rights" on the importation of five persons into the colony.<sup>3</sup> Other examples in this and other counties could be cited.<sup>4</sup> Among

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<sup>1</sup> Transcribed copy in the Virginia State Library, p. 152.

<sup>2</sup> MS. Court Records of Northampton County, 1645–1651, pp. 83, 131; above, pp. 27, 28 n.

<sup>3</sup> MS. Land Patents of Virginia, 1643–1651, p. 326.

<sup>4</sup> See above, p. 38.



the deeds of York County for the year 1664 is one conveying a tract of land<sup>5</sup> from a white man to a negro. The county court of the same county held in 1660 that a free negro was capable of receiving property by bequest.<sup>6</sup>

The right of free negroes to property, personal and real, thus amply recognized in the seventeenth century, was preserved by the courts throughout the entire period under review. In the case of *Parks v. Hewlett*,<sup>7</sup> decided in 1838, the supreme court of appeals says: "He [the free negro] is at once entitled to acquire and enjoy property. His person is under the protection of the laws, and he has a right to sue for injuries done to person or to property. He may even acquire lands and hold slaves and will transmit them by inheritance to his children." In 1858, when the laws no longer allowed free negroes to acquire slaves except by descent, the courts still upheld the property rights of free negroes by holding that when a bequest of slaves was made to persons in trust for free negroes, the slaves must be sold or exchanged for a kind of property which free negroes could lawfully possess, and that the proceeds of the sale must be distributed among the free negroes according to the provisions of the will.<sup>8</sup>

Free negroes owning property transferred it by deed or transmitted it by will just as did white persons.<sup>9</sup> Courts of record and probate were open to them for recording legal evidences of sale or transfer of property,<sup>10</sup> and upon the

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<sup>5</sup> MS. Court Records of York County, 1664-1672, p. 327, in Virginia State Library.

<sup>6</sup> "Itt is ordered yt John Negro servant to Thomas Whitehead Dec'd be and is hereby declared Free and that he have his cattle & other things belonging to him delivered (to him) according to ye Dec'd Will & Costs" (MS. Court Records of York County, 1657-1662, pp. 211, 217, in Virginia State Library).

<sup>7</sup> 9 Leigh, 511.

<sup>8</sup> 14 Grattan, 251.

<sup>9</sup> Henning, vol. xiii, p. 619.

<sup>10</sup> In 1829 William Yates, a free negro, died leaving a will by which he gave his "estate real and personal," after payment of his debts, to Henry Edloe and Robert McCandlish in trust for his wife Maria, who was his slave, to be paid over to her as soon as she could be freed and be allowed to remain in the State. The will was admitted to probate, and an administrator was appointed to carry out its provisions (3 Grattan, 330).

courts devolved the duty of seeing that estates of intestates were lawfully administered for the benefit of the rightful heirs. In the case of *Hepburn v. Dundas*,<sup>11</sup> by the authority of the highest court of the State the rights of collateral heirs to the estate of a free negro who died intestate and without children were fully asserted. The agency of the courts, either of common law or equity, was resorted to with no unusual difficulties by free negroes in the enforcement of bequests of property to them.<sup>12</sup>

† The inviolability of the property rights of free negroes was an effective argument against the frequent proposals to remove the entire free negro population from the State. In the legislature of 1832 General Brodnax affirmed that the free negroes, in the event of deportation, could easily dispose of their small holdings. But Marshall, who opposed forcible deportation, declared that there are those "who have property which they must dispose of before leaving the country. Will you force them to bring their property into market all at once to be sacrificed by one precipitate sale?"<sup>13</sup> The argument prevailed against those who favored the measure, and the bill was lost.

In order that certain individuals might have time to dispose of property left them by their deceased masters, numerous private acts were passed by the legislature granting them permission to remain in the State contrary to the law of 1806.<sup>14</sup> In 1842 a House of Delegates bill to prohibit free negroes from acquiring real estate met with but slight consideration.<sup>15</sup>

The most remarkable property right possessed by free negroes was the right to acquire, own, and alienate slaves. Indeed, for more than twenty years from the time when free negroes first appear in the courts there was no legal

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<sup>11</sup> 13 Grattan, 219.

<sup>12</sup> *Dunlap v. Harrison*, 14 Grattan, 251.

<sup>13</sup> *Richmond Enquirer*, February 14, 1832.

<sup>14</sup> Acts, 1821-1822, p. 85; 1828-1829, p. 157; 1829-1830, p. 134; 1830-1831, p. 306; 1832-1833, pp. 198, 199. The law of 1806 here referred to required slaves manumitted after May 1, 1806, to leave the State within twelve months. See above, p. 45, 45 n.

<sup>15</sup> House Journals, 1841-1842, pp. 66, 114, 162.

restriction upon their right to own indentured white servants. Such a reversal of the usual order may have been in a few cases actually attempted, for in 1670 a law was enacted which declared that "noe negro or Indian though baptized and enjoined their own ffredome shall be capable of any purchase of Christians, but yet not debarred from buying any of their owne nation."<sup>16</sup> There is on record in the Northampton County court-house a clear case of the ownership by a free negro of a negro servant as early as 1655.<sup>17</sup>

Not before 1832 were free negroes forbidden to own negro slaves. That this right was quite commonly exercised, notably in the nineteenth century, is a fact well supported by evidence. It was not unusual among the free colored people for one member of the family to hold one or more of the other members in legal bondage. The following indenture of 1795 illustrates this form of slavery:—

Know all men of these presents that I, James Radford of the county of Henrico for and in consideration of the sum of thirty-three pounds current money of Virginia to me in hand paid by George Radford (a black freeman) of the city of Richmond . . . hath bargained and sold unto George Radford one negro woman aggy, To have and to hold the said negro slave aggy unto the said George Radford his heirs and assigns forever.

JAMES RADFORD (Seal)<sup>18</sup>

Equally instructive is the following "Deed of sale of slaves to a freeman" of the same date:—

Know all men of these presence that I David A. Jones of Amelia County of the one part have for and in consideration of the sum of five hundred dollars granted unto Frank Gromes a black man of the other part a negro woman named Patience and two children by name Phil & Betsy to have and to hold & to hold the above

<sup>16</sup> Hening, vol. ii, p. 280. The act of 1748 concerning servants and slaves declared "that no negroe, mulatto, or Indian although a Christian or any Jew, Moor, Mohametan or other infidel shall at any time purchase any Christian servants nor any other except their own complexion, or such as by this act are declared slaves: and if any of the persons aforesaid shall nevertheless presume to purchase a Christian white servant, such servant shall immediately become free, and be held deemed and taken" (ibid., vol. v, p. 550).

<sup>17</sup> MS. Court Records of Northampton County, 1651-1654, p. 226; above, pp. 32, 33.

<sup>18</sup> MS. Deeds of Henrico County, no. 5, p. 585.

named negroes to the only proper use, behalf and benefit of him and his heirs forever.

DAVID JONES (Seal)<sup>20</sup>

✕ Free negro men often thus purchased their slave wives, and, fearful of residence prohibitions upon manumitted negroes, held their wives and children as their bond slaves.<sup>20</sup> Free negro women sometimes purchased their slave husbands to subject them to a more agreeable bondage, themselves becoming in an unusual sense their mistresses and owners.<sup>21</sup> Daughters were sometimes the property of their mothers, as in the case of Janette Wood, of Richmond, who in the year 1795 was emancipated by her mother "for and in consideration of natural love."<sup>22</sup> John Sabb of Richmond in the year 1801 purchased his aged father-in-law, Julius, and manumitted him for the nominal sum of five shillings.<sup>23</sup>

Prior to 1806 the purchase of one member of a family by another was usually soon followed by a deed of manumission, but after an act<sup>24</sup> of that year had made illegal the continued residence of negroes manumitted after May 1, 1806, the relation of master and slave within free negro

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<sup>20</sup> MS. Petitions, Amelia County, A 768.

<sup>21</sup> A free negro of Prince William County, Daniel Webster by name, being sixty years of age and expecting soon to die, petitioned the legislature to permit his wife and children to remain in Virginia contrary to the law of 1806, which required slaves manumitted thereafter to leave the State within twelve months. During his life he had avoided the evil consequences of this law to the members of his family by continuing to own them as his slaves; but at his death the danger of their being sold by an administrator was more threatening than the danger of removal from the State, and he wished to manumit them (MS. Petitions, Prince William County, 1812).

<sup>22</sup> In 1828 Phil Cooper and his wife, free people of color, petitioned the legislature for a law permitting the husband to reside in Virginia. His wife owned him as her slave, but wished to manumit him provided that he might live in the State (MS. Petitions, Gloucester County, A 6987). See also Lower Norfolk County Virginia Antiquary, vol. iv, p. 177, for statement concerning Betsy Fuller, a free negro huckstress of Norfolk, who owned her husband. Upon the approach and outbreak of the Civil War the slave husband was loud in the expression of southern views, and evidently was indifferent as to his emancipation.

<sup>23</sup> MS. Deeds of Henrico County, no. 4, p. 692.

<sup>24</sup> Ibid., no. 6, p. 274.

<sup>25</sup> Hening, vol. xvi, p. 252.

families became quite common. A petition of a slave woman, Ermana, to the legislature of 1839 stated that her husband had been a free man of color, that he had died intestate, and that she, her children, and her property had escheated to the literary fund. She prayed that the right of the fund to her and to her property be relinquished.<sup>25</sup> Sally Dabney, a slave of her husband, was bequeathed property by his will as if she had been free. The testator died without heirs. The wife, being a slave, was not competent to receive the bequest; hence the property escheated to the literary fund. The question arose as to whether the wife also should not be sold for the benefit of the fund, and an act of the legislature was passed to release the claims of the State to her.<sup>26</sup>

In the exercise of their legal right to own slaves black masters did not always confine themselves to the purchase of their kindred for beneficent purposes. Some negroes purchased and held slaves with the same considerations of profit in view as governed the actions of white owners of slaves. An example in the seventeenth century is that of John Casor, a negro, who was by order of a county court remanded to the service of Anthony Johnson, a negro freeholder.<sup>27</sup> Judith Angus, a well-to-do free negress of Petersburg, owned two slave girls as her personal servants. At her death she left a will, dated 1832, by which she disposed in regard to these two girls as follows: "My servants Jimmy and Docy shall work until they obtain money enough to enable them to leave the state and thereby secure their freedom according to the laws of Virginia. In the event of their remaining here, they shall belong to my son Moses."<sup>28</sup> Against a free negro who held another negro in slavery could be used only such legal remedies as could be used

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<sup>25</sup> It is probable that all the relatives of the deceased man were slaves; hence his property escheated to the State (House Journal, 1839, p. 21).

<sup>26</sup> Acts, 1834-1835, p. 242.

<sup>27</sup> MS. Court Records of Northampton County, 1651-1654, p. 226; above, pp. 32, 33.

<sup>28</sup> MS. Petitions, Dinwiddie County, 1833, A 5123.

against a white master. Mary Quickley, a free black woman of Richmond, held as her slave a woman named Sarah. Suit was granted in the hustings court to Sarah against her black mistress only after appointed counsel had inquired into the claims of Sarah based upon her own free status. Suit was granted at the same time to Sarah's children, who were held by white persons.<sup>20</sup>

Complete as were the free negro's rights in property lawfully possessed, he was nevertheless limited in a few respects as to the kinds of property he could acquire. The limitations imposed were police regulations, and were apparently not discriminations against the free negro as such. In the ownership of slaves, dogs, firelocks, poisonous drugs, and intoxicants, free negroes were subject to limitations which did not apply to white persons.

As early as 1670 free negroes were forbidden to own white servants.<sup>21</sup> By an act of 1832 they were declared incapable of purchasing or otherwise acquiring permanent ownership, except by descent, of any slaves other than husband, wife, and children; contracts for any such purchase were declared void.<sup>22</sup> By the Code of 1849 the limitation was the same, except that parents were included among the persons whom free negroes could acquire.<sup>23</sup> An amendment of this section, made March 31, 1858, changed the law to read: "No free negro shall be capable of acquiring, except by descent, any slave."<sup>24</sup> There is evidence, however,

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<sup>20</sup> "On a petition of Sarah alledging herself illegally detained in slavery by Mary Quickley a free black woman of this city . . . [and on a similar petition of Sarah's children] for leave to sue their owners for freedom in forma pauperis, Ordered that James Rind Gent. be requested to certify his opinion to this court respecting the probable claims of the petitioners . . . which he having done, It is further ordered that they be allowed to sue for their freedom" (Orders of Hustings Court of Richmond, vol. 5, p. 41).

<sup>21</sup> Hening, vol ii, p. 280.

<sup>22</sup> Acts, 1831-1832, p. 20. The vote by which this bill was passed in the Senate was 15 to 14 (Senate Journal, 1832, p. 176).

<sup>23</sup> Code (1849), p. 458.

<sup>24</sup> Acts, 1857-1858; Code (1860), p. 510. "The object of this law is probably to keep slaves as far as possible under the control of white men only, and prevent free negroes from holding persons of their own race and color in personal subjection to themselves.

that these laws prohibiting the purchase and sale of slaves by free negroes were not enforced, and that free negroes continued after 1832 to go into the market to purchase slaves for profit. Had it not been so, there would have been no occasion for the repeated propositions made and the laws passed after 1832 to prevent the practice. Moreover, there are persons living who affirm from observation that down to the Civil War some free negroes owned slaves merely in order to profit by them.<sup>84</sup>

Another limitation upon the right of free negroes to own property was that in respect to firearms or other weapons, with which they might themselves do injury, or, by placing them in the hands of slaves, menace the safety of society.

\* An act of 1680 declared that "no negro or other slave" could own or carry a "club, staffe, gunn or any other weapon of defense or offense."<sup>85</sup> In the revision of the laws in 1705 the word "negro" was omitted, so that slaves only were forbidden to keep arms.<sup>86</sup> In 1723 free negroes, mulattoes, and Indians were forbidden to "keep or carry any gun, powder or shot or any club or other weapon whatsoever offensive or defensive." Free negro housekeepers and those enrolled in the militia were, however, excepted.

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Perhaps also it is intended to evince the distinctive superiority of the white race" (Opinion of Judge Lee in *Dunlop v. Harrison's Executors*, 14 Grattan, 260).

<sup>84</sup> Reuben West, a free negro barber who lived in Richmond during the last three decades before the Civil War and paid taxes on real property valued at \$4420 (City Tax Books, 1856, 1859), is said by William Munda, a mulatto barber now living in Richmond, who was born free in 1837, to have purchased a slave house servant. According to the statement of Munda, who was at that time serving an apprenticeship to Reuben West, this woman slave showed toward her black master a spirit of insubordination, and was therefore soon sold by him. James H. Hill, another colored contemporary of Reuben West, asserts that West owned two slaves, and that one of them was a mulatto barber. As far as the statements made by these men in lengthy interviews with the author could be verified in authentic records, they were found to be trustworthy. See also Lower Norfolk County Virginia Antiquary, vol. iv, pp. 174-182, for negro slave-owners enumerated in a list, prepared by the commissioners of the revenue, of all slave-owners of Princess Anne County in 1840.

<sup>85</sup> Henning, vol. ii, p. 481.

<sup>86</sup> Ibid., vol. iii, p. 459.



Such as lived on frontier plantations could upon application be granted licenses to keep and use one gun.<sup>37</sup>

The acts regulating the enlistment of free negroes in the militia in the eighteenth century show the distrust which was felt of negroes in possession of firearms. The militia act of 1748 declared that "all such free mulattoes, negroes or Indians, as are or shall be listed, as aforesaid, shall appear without arms."<sup>38</sup> The substance of this provision was repeated in 1755<sup>39</sup> and in 1757.<sup>40</sup> The provision was dropped during the Revolution, manifestly for the purpose of permitting free colored men to become soldiers.<sup>41</sup> With the increase of the free negro class and following the discovery of a negro plot in 1800, the feeling of danger from free negroes in possession of firearms became more intense; and a law of 1806 forbade any free negro or mulatto, house-keeper or otherwise, to "keep or carry any fire-lock of any kind, any military weapon or any powder or lead" without first obtaining a license from the county or corporation court.<sup>42</sup> A free negro caught with a gun or other weapon in violation of this act forfeited the weapon to the informer, and received thirty-nine lashes at the whipping-post.<sup>43</sup>

More rigid still was the law dealing with this subject which was passed in the first session of the legislature after the Southampton insurrection.<sup>44</sup> So much of former acts as permitted justices to grant licenses to free negroes or

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<sup>37</sup> Hening, vol. iv, p. 131.

<sup>38</sup> Ibid., vol. v, p. 17.

<sup>39</sup> Ibid., vol. vi, p. 33.

<sup>40</sup> Ibid., vol. vii, p. 95.

<sup>41</sup> Ibid., vol. ix, p. 27 (1775); vol. ix, p. 268 (1777); see below, p. 110.

<sup>42</sup> A Norfolk County court in 1820 made the following order: "Upon the application of James Cuffie, a free man of colour, residing in this county, a license is granted him to keep a gun with ammunition for the protection of his property" (MS. Orders, 1819-1820, circa p. 280). Note also the following: "Ordered that the order of this court made the 9th day of August last granting permission to James Harris a free man of colour to carry and use a gun be rescinded" (MS. Minutes of Henrico County, no. 27, p. 516).

<sup>43</sup> Hening, vol. xvi, p. 274.

<sup>44</sup> Acts, 1831-1832, p. 20.



mulattoes to keep or carry a firelock or any powder or lead were by this law repealed. This absolute denial to free negroes of the use of firearms imposed a serious disability upon the farming element of this class. In 1839 Thomas Beasley, a free negro of Giles County, remonstrated to the legislature against this prohibition, saying that the mountainous frontier country where he lived was infested with wild beasts, and that the law prohibiting free negroes to use firelocks subjected him and his class to a great hardship in that they had no means of protecting their domestic animals and crops.<sup>45</sup> A similar petition, endorsed with the signatures of eighty white citizens, was presented in 1840 by James and Joseph Viney, free negroes of Giles County.<sup>46</sup> In spite of remonstrances against this law, it remained in force until the Civil War.<sup>47</sup> In 1839 patrols in search of arms unlawfully held were granted authority to force open the doors of such free negroes as were suspected of violating these laws.<sup>48</sup>

The ownership by free negroes of dogs, as of firearms, was objectionable, and for similar reasons. Prowling free negroes accompanied by dogs became a menace, particularly to the sheep-raising industry,<sup>49</sup> and efforts were made in several counties to prevent free negroes from keeping dogs. In 1848 an act forbade free negroes in Mathews County to own dogs.<sup>50</sup> In 1858 a similar law was passed for the counties of Essex, King and Queen, James City, and New Kent.<sup>51</sup> For passing through or going about in any of these last named counties with a dog a free negro was liable to punishment by stripes, not exceeding thirty-nine, and a fine of five dollars. A bill to make general the prohibition through-

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<sup>45</sup> MS. Petitions, Giles County, 1839, A 6812.

<sup>46</sup> Ibid., 1840, A 6821.

<sup>47</sup> Code (1849), p. 754; Code (1860), p. 816.

<sup>48</sup> Acts, 1839, p. 24.

<sup>49</sup> See a petition to the legislature which represents that both free negroes and dogs kill sheep as they prowl through the neighborhood (MS. Petitions, Chesterfield County, 1854, A 4321).

<sup>50</sup> Acts, 1847-1848; House Journal, 1847-1848, p. 436.

<sup>51</sup> Acts, 1857-1858, p. 152.

out the State passed the House of Delegates in 1848, but failed to receive the approval of the Senate.<sup>53</sup>

The laws of Virginia extended their protection not only, as we have already seen, to the property of the free negro, but, as we shall now see, to his life and liberty. In any case in which the freedom of a negro was disputed the burden of proof was upon the negro to show that he was free. Unlike the recognized principle of English law which demands that every man be regarded as innocent till his guilt is established by evidence, a free negro taken up and deprived of his liberty as being a slave had, in order to procure his release, to produce evidence that he was not a slave. In 1806 George Wythe, chancellor of the State of Virginia, gave as grounds for decreeing the freedom of three persons claimed as slaves that freedom is the birthright of every human being. He laid it down as a general proposition that whenever one person claims to hold another in slavery, the onus probandi lies on the claimant. This application of the Declaration of Independence was completely repudiated by the supreme court of appeals when the case came up for final review.<sup>54</sup> Judge Tucker, who spoke for a unanimous court, asserted that the burden of proof is not upon the claimant, but upon the negro to show that he is free; whereas with a white man or an Indian held in slavery the burden is with the claimant.<sup>54</sup> Again, in *Fulton's Executors v. Gracey*

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<sup>53</sup> House Journal, 1847-1848, p. 436. In the act incorporating the town of Manchester authority was given to the trustees to prohibit slaves, free negroes, and mulattoes from raising hogs and dogs (Acts, 1843-1844, p. 96).

Although free negroes were not forbidden to possess poisonous drugs and intoxicating liquors, the sale of these articles to them was a matter of rigid regulation or absolute prohibition (Acts, 1855-1856, p. 45; 1857-1858, p. 51). Complaint came to the legislature in 1836 that free negroes were acting as agents for slaves in purchasing ardent spirits from the venders (MS. Petitions, Northumberland County, 1836, B 4969).

<sup>54</sup> *Hudgins v. Wright*, 1 Hening and Munford, 133.

<sup>54</sup> In the argument Judge Tucker supposes that "three persons, a black or mulatto man or woman with a flat nose and woolly head; a copper-colored person with long jetty black or straight hair; and one with fair complexion, brown hair, not woolly, nor inclined thereto, with a prominent Roman nose, were brought together before

the court declared that "in the case of a person visibly appearing to be a white man or Indian the presumption is that he is free, but in the case of a person visibly appearing to be a negro, the presumption is that he is a slave. . . . The plaintiff in a suit for freedom must make out his title against all the world."<sup>55</sup>

The presumption being thus against the freedom of negroes, there was always a temptation to "divers ill-disposed persons" to force free negroes into slavery by theft, capture, or collusion, especially those free negroes whose occupations were already servile.<sup>56</sup> A law of 1765, designed to prevent this practice, fixed at £70 the penalty for selling as a slave a colored person who was only a servant.<sup>57</sup> In 1788, when the precious character and value of liberty was receiving unusual emphasis, a law was enacted which fixed upon persons guilty of stealing or selling as a slave any free negro or mulatto the extreme penalty of death without benefit of clergy.<sup>58</sup> By the enactments of 1792 the penalty remained the same, but in the codification of 1819 it was changed from death<sup>59</sup> to imprisonment in the penitentiary for at least two years.<sup>60</sup> An act of 1848 raised the minimum term to three years, and after that no further change was made in the penalty for this offense.<sup>61</sup>

Far from becoming empty verbiage in our criminal code, these laws received general and often rigorous enforcement.<sup>62</sup> In the opinion of the general court in Common-

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a judge upon a suit of habeas corpus. . . . How must the Judge act in this case? . . . If the whole case be left with the judge, he must deliver the [white man and the Indian] out of custody, and permit the negro to remain in slavery, until he could produce proof of his freedom." Cf. case of Aron Jackson, in MS. Minutes of Henrico County, no. 27, p. 142.

<sup>55</sup> 15 Grattan, 323.

<sup>56</sup> For examples, see Calendar of Virginia State Papers, vol. i, p. 10; 11 Leigh, 633; MS. Minutes of Henrico County, no. 27, p. 129.

<sup>57</sup> Henning, vol. viii, p. 133.

<sup>58</sup> Ibid., vol. xii, p. 531.

<sup>59</sup> Ibid., vol. xiv, p. 127.

<sup>60</sup> 1 Revised Code, 427.

<sup>61</sup> Acts, 1847-1848, p. 97; Code (1860), p. 785.

<sup>62</sup> MS. Minutes of Henrico County, no. 27, p. 129; Commonwealth v. Nix, 11 Leigh, 636.

wealth v. Mercer they were not to be construed as a protection for a white man who might become the victim of fraud if a free negro should be sold to him as a slave, but their purpose and use was the protection of free negroes in their freedom.<sup>63</sup> In *Davenport v. Commonwealth*<sup>64</sup> the supreme court of appeals held that kidnapping a free negro without the actual sale constituted the crime against which the law was directed, and, further, that stealing a free negro with felonious intent to appropriate him was criminal, whether the person knew him to be free or not. The activity and interest manifested in the prosecution of violators of this law is shown by the proclamation of Governor Lee issued July 8, 1794:—

Whereas I have received information that some wicked and evil-disposed persons . . . did on the night of the 20th of June last feloniously steal and take away two children of Peggy Howell, a free Mulatto living in the county of Charlotte, with a design as is supposed to sell them in some of the neighboring states as slaves, the name and description of which children are contained in the Hue and Cry subjoined, and whereas the rights of humanity are deeply interested in the restoration of the children to their parents, and the good order of society is involved in the punishment of the offenders, I do by and with the advice of the Council of State issue this Proclamation offering a reward of Fifty Dollars for the recovery of each of the said children and the further sum of one hundred dollars for apprehending and securing in the public jail of Charlotte County the offender or offenders.

HENRY LEE.<sup>65</sup>

Against the easy abuse of the principle of presuming slavery from color the liberty of the free negro was further safeguarded by remedial laws of procedure and by a general liberality in the courts in consideration of all claims to freedom. A legally certified register, called by the free negroes

<sup>63</sup> Abram Hiter, a free negro, entered into an agreement with a white man named Mercer to allow himself to be sold as a slave. Hiter, it was planned, would later assert his freedom and share with Mercer the proceeds of the sale. Mercer's act of defrauding the purchaser was not punishable under the law, inasmuch as it involved no fraud upon the negro (2 Va. Cases, 144).

<sup>64</sup> 1 Leigh, 588.

<sup>65</sup> MS. Proclamation Book, p. 53; Calendar of Virginia State Papers, vol. viii, p. 231. See MS. Court Records of Charlotte County, 1794, for proceedings of a court held for the purpose of taking depositions in this case.

"free papers," was sufficient to repel the presumption and to shift the burden of proof to the person denying freedom to its possessor. "To suppose," said the court in *Delacy v. Antoine*, "that a free negro in possession of regular free papers may be falsely imprisoned without redress is indeed to attribute a gross and lamentable omission to the law. To confine that redress to a suit in *forma pauperis* to establish his freedom when he already has the conclusive proof of it in his hands would be a mockery. A free negro as well as a free white man must be entitled to the habeas corpus act."<sup>66</sup>

After 1793 every free negro was required to register in the county or corporation court, and for twenty-five cents was entitled to a copy of the register with the seal of the court annexed, which copy was *prima facie* evidence of freedom.<sup>67</sup> In the absence of immediate evidence of freedom, a free negro detained as a slave could bring suit in *forma pauperis*, in which he had the benefit of assigned counsel and which was conducted without cost to the plaintiff.<sup>68</sup> He was protected by the laws against intimidation in his suit from the person claiming to be his master.<sup>69</sup> Courts of equity were open to him.<sup>70</sup> Liberal rules of evidence in suits either in law or equity where freedom was involved were applied. If he had lost his free papers, he could offer evidence that he had once had them.<sup>71</sup> Hearsay and reputation were received as evidence of the status of one's ancestors in an effort to establish free birth.<sup>72</sup> An

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<sup>66</sup> 7 Leigh, 438; cf. 15 Grattan, 256, 323.

<sup>67</sup> Hening, vol. xiv, p. 238; 1 Revised Code, 440.

<sup>68</sup> Hening, vol. xiv, p. 363; 1 Revised Code, 481. "On petition of Sarah [and her children] . . . It is ordered that they be allowed to sue for their freedom in this court in *forma pauperis* and James Rind Gent is assigned their counsel to prosecute the said suits and that their owners do not presume to remove, beat or misuse them upon this account, but suffer them to come to the Clerk's office of this court for subpoenas for their witnesses and to attend their examinations" (Orders of Hustings Court of Richmond, no. 5, p. 41).

<sup>69</sup> Orders of Hustings Court of Richmond, no. 5, p. 41.

<sup>70</sup> *Sam v. Blakemore*, 4 Randall, 466; 1 Hening and Munford, 133.

<sup>71</sup> MS. Minutes of Henrico County, no. 27, p. 503.

<sup>72</sup> In *Pegram v. Isabell*, a suit for freedom, a witness for the negro testified that he had heard a very old man say that he believed a certain ancestor of Isabell was free. The supreme court of appeals

oft repeated doctrine of the supreme court of appeals was that the laws should be construed as far as possible in favor of freedom. "I will remark," said Judge Campbell, "that this court has often declared that the same strictness as to form will not be required in actions for freedom as in other cases."<sup>72</sup> Judge Roane, speaking for the court in *Patty v. Colin* in 1807, said: "The spirit of the decisions of this court in relation to suits for freedom, while it neither abandons the rules of evidence nor the rules of law, applying to property, with a becoming liberality, respects the merit of the claim. . . . On this ground it is that parties suing for freedom are not confined to the rigid rules of proceeding and that their claims are not repudiated by the Court as long as a possible chance exists that they can meet with a successful issue."<sup>74</sup>

These special rules of procedure were needed, however, only in cases in which the question of freedom was being tried. "Where there is no contest about that right, but the litigation arises out of other matters it would be absurd to send the petitioner [a free negro] to sue in forma pauperis," said Judge Tucker, in a case before the court in 1836; "the remedy of habeas corpus must of course prevail."<sup>75</sup> A trial upon a writ of habeas corpus could not be denied a free negro if detained or deprived of his liberty by any person not claiming to be his master,<sup>76</sup> as, for example, by a creditor

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held that such evidence was admissible (2 Hening and Munford, 210; cf. *Gregory v. Baugh*, 2 Leigh, 665, and *Hudgins v. Wrights*, 1 Hening and Munford, 134). In 15 Grattan, 314, the supreme court says: "Evidence of her having acted and been generally reputed as a free person is certainly admissible evidence of her freedom." In *Fulton's Executors v. Gracey* the court held that "any legal evidence tending to show that the plaintiffs are free tends to repel the presumption arising from color that they are slaves, and is, therefore, admissible" (15 Grattan, 323).

<sup>72</sup> *McMichens v. Amos*, 4 Randall, 134.

<sup>73</sup> 1 Hening and Munford, 519.

<sup>74</sup> 7 Leigh, 538.

<sup>75</sup> *Delacy v. Antoine et al.*, 7 Leigh, 443 (1836); *Rudler's Executors v. Ben*, 10 Leigh, 467; *Shue v. Turk*, 15 Grattan, 256; *Minor*, vol. i, p. 169. In the case of *Peter et al. v. Hargrave* (5 Grattan, 14), tried in 1848, Judge Baldwin said concerning the rights of a free negro, "Against continued force he may invoke the high and summary remedy by writ of habeas corpus."

of himself or of his former owner; nor was he handicapped in such cases with the burden of proof or a presumption of guilt against him. Against persons doing him injury or for the enforcement of contracts he could bring suit in any court that was open to any other freeman.<sup>77</sup> In case the decisions of the lower courts were adverse, he could appeal even to the highest court of the State.<sup>78</sup> He could, and often did, petition the legislature when his grievances were such as could not be redressed by the courts.<sup>79</sup>

Prior to 1832, trial by jury was the method of determining the guilt or innocence of free negroes charged with crimes. They were regularly indicted or presented by a grand jury, and were entitled to a hearing upon the indictment before a petit jury.<sup>80</sup> Being indicted, they were allowed to go at liberty when they could furnish a satisfactory bond to secure their appearance in answer to the indictment.<sup>81</sup> They were entitled to counsel, could make exceptions in arrest of judgment, and the unanimous consent of

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<sup>77</sup> "William Palmer appeared to answer the complaint of Peter Robinson (a free black man) against him for breach of the peace." Palmer was bound under penalty of forfeiture of one hundred dollars "to keep the peace and be of good behavior . . . and particularly toward Peter Robinson" (Orders of Hustings Court of Richmond, no. 5, p. 132). The Norfolk County court records (1718-1719, p. 1) contain the following entry: "Robert Richards and the rest of the free negroes agst. Lewis Corner Meritt in an action for debt not being prosecuted is dismissed." See also, MS. Orders of Henrico County, no. 6, p. 4, for the case of "David Cowper, a free negro, Plt. against Beltaes Dorish Deft. Suit abated by death of Deft." Also MS. Court Orders of Norfolk County, 1768-1771, p. 257: "Frank (a free negro) against Jane Miller;" and Jefferson's Reports, 90.

<sup>78</sup> *Ex parte Morris*, 11 Grattan, 292 (1854), was a case in which a free negro appealed from a corporation court to a circuit court and finally to the supreme court of appeals. *Winn's Administrators v. Jones* was a case taken on appeal in 1835 by a negro to the supreme court of appeals; this court sustained his challenge of free negro witnesses used against him in the lower court (6 Leigh, 74).

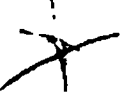
<sup>79</sup> See Calendar of Virginia State Papers, vol. i, p. 10 (1665); Journal of the House of Burgesses, 1766-1769, p. 198: "a petition of the people called mulattoes and free negroes;" MS. Petitions, Henrico County, 1838, and below, pp. 142-144, for examples of petitions of free negroes to the state legislature.

<sup>80</sup> *John Aldridge v. the Commonwealth*, 2 Va. Cases, 447; St. G. Tucker, *A Dissertation on Slavery*, pp. 56-58.

<sup>81</sup> Orders of Hustings Court of Richmond, no. 11, p. 153.



the jurymen was necessary for conviction. Prior to 1832, in the method of trial for crimes free negroes were on the same footing as white men.<sup>82</sup>

 In the first session of the legislature following the Southampton insurrection in 1831, free negroes were denied by statute the right of trial by jury, except for offenses punishable with death. Thereafter they were tried by courts of oyer and terminer,<sup>83</sup> which had been in use since 1692 for the "speedy prosecution of slaves . . . without the solemnity of jury."<sup>84</sup> No fewer than five justices of the county or corporation could sit as a court, and a unanimous decision was necessary for conviction. The decisions of the court, comprehending both the law and the fact, were final.<sup>85</sup> The trial took place within ten days after commitment of the prisoners to jail, and conviction was followed by a speedy execution of the sentence.<sup>86</sup> The substitution of this summary method of trial for the former method of trial by jury is indicative of the disfavor into which the free negro had fallen, and represents no small change in his legal status.

For minor offenses and misdemeanors free negroes suffered penalties similar to those inflicted upon slaves for similar violations. Throughout the entire period whipping, "not exceeding thirty-nine lashes on the bare back, well laid on," was not an unusual penalty for free negroes as

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<sup>82</sup> St. G. Tucker, *A Dissertation on Slavery*, pp. 56, 57; *Peter v. Hargrave*, 5 Grattan, 12. See Hening, vol. xv, p. 77, on "due course of law" to be pursued in convicting free negroes of conspiracy with slaves.

<sup>83</sup> Acts, 1831-1832, ch. 22, sec. 9; Code (1860), ch. ccxii. An amendment to strike out of the law the clause denying to free negroes jury trial was lost in the Senate by a vote of 9 to 20 (*Senate Journal*, 1832, p. 177). The act provided that free negroes should be tried by the slave courts "in all cases where the punishment shall be death." Disputes at once arose as to whether this meant offenses for which slaves had suffered death or offenses capital when committed by free negroes. The courts prevented the severity of the law relating to the punishment of slaves from passing to the free negroes by determining that the act changed the method of trial but not the method of punishment (4 Leigh, 652, 658, 661).

<sup>84</sup> Hening, vol. iii, p. 102; vol. iv, p. 127.

<sup>85</sup> 1 Revised Code, 428-430; Supplement to Revised Code, 248; *Anderson (Free negro) v. Commonwealth*, 5 Leigh, 740.

<sup>86</sup> 1 Revised Code, 428.



well as for slaves. Corporal chastisement was prescribed as a punishment for free negroes in many cases which, had the offender been a white man, would have merited the penalty of a fine. For instance, for importing a free negro a white man was to be imprisoned from six to twelve months and fined not less than five hundred dollars, whereas a free negro for the same offense was to receive not less than twenty nor more than thirty-nine lashes at the public whipping-post.<sup>87</sup> For unlawful destruction of oysters in the tidewater section a white man would under the law be fined fifty dollars, while a free negro would be fined twenty dollars and given thirty-nine lashes on the bare back.<sup>88</sup> For unlawfully harboring a slave a white man and a free negro alike forfeited ten dollars, but if the negro was unable to pay the fine, he was given thirty-nine lashes instead.<sup>89</sup> In many such instances the law openly discriminated against the free negro, making his punishments more severe than those inflicted upon white freemen, while the shield given to slaves in their misdemeanors by the disciplinary authority of the master rendered the liability to public punishments of the slave less than that of the free negro. The free negro was the individual for whom the laws seem to have been intended, and to him they were applied with peculiar rigor.

For the more serious offenses, that is, for grand larceny and other felonies, the punishments to be administered to free negroes and whites were for the most part the same. A notable discrimination was introduced in 1823 when crime among the free negroes was believed to be rapidly increasing, and the penitentiary system was receiving blame for a lack of restraint on and moral improvement of this class of the population.<sup>90</sup> The legislature enacted that free negroes previously punishable with imprisonment in the

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<sup>87</sup> Acts, 1833-1834, p. 78.

<sup>88</sup> Ibid., 1836-1837, p. 56.

<sup>89</sup> Henning, vol. xv, p. 77. "They are subjected to restraints and surveillance in points beyond number" (Howison, vol. ii, p. 460).

<sup>90</sup> Report of the Superintendent of Penitentiary, in Documents of the House of Delegates, 1848-1849, no. 15, cited as House Documents.

penitentiary for terms of more than two years were thereafter to be whipped, transported, and sold into slavery beyond the limits of the United States.<sup>91</sup> This act was construed to mean that any free negro found guilty of a crime for which the maximum penalty prescribed was more than two years, even though the minimum might be only six months, should be whipped and sold as a slave. Thus construed, the act included within its scope almost every crime, except petty larceny, committed by free negroes. Public sentiment disapproved of this inhuman law, and forced its repeal, although thirty-five negroes were transported and sold into slavery during the four years that it remained in force.<sup>92</sup> In 1828 imprisonment in the penitentiary was again resorted to as a punishment for free negroes, but five years was made the shortest term for which a free negro could be sentenced, whereas two years was the minimum for white persons.<sup>93</sup> In 1833 proposals to make more severe the penalties upon free negroes were voted down in the House of Delegates as inexpedient.<sup>94</sup> The penal code of 1848 made uniform for all free persons the penalties for most criminal offences.<sup>95</sup> A final discrimination was introduced in 1860 by an act which provided that free negroes convicted of crimes punishable by sentence to the penitentiary could at the discretion of the court be sold into perpetual slavery.<sup>96</sup>

The right to go from place to place without hindrance might well be regarded as a right fundamental to real freedom, yet in few other respects was the liberty of free ne-

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<sup>91</sup> Acts, 1822-1823, p. 36. The constitutionality of this act was passed upon and maintained by the general court of the State in the case of John Aldridge (free negro) v. the Commonwealth, 2 Va. Cases, 447.

<sup>92</sup> Reports of the Superintendent of Penitentiary, in House Documents, no. 15, 1848-1849, and no. 4, 1853-1854, p. 45; W. B. Giles, comp., Political Miscellanies: Letters to La Fayette; opinions of Dade and Parker in John Aldridge v. Commonwealth, 2 Va. Cases, 452, 457.

<sup>93</sup> Acts, 1827-1828, p. 29.

<sup>94</sup> House Journal, 1832-1833, p. 208.

<sup>95</sup> Acts, 1847-1848, p. 99; Code (1849), p. 728 et seq.

<sup>96</sup> Acts, 1859-1860, p. 163.

groes restricted so much as in this. In the colonial period there was little regulation of their movements; but from the time that their number reached several thousand on to the Civil War their liberty to move about in the State and to go out and return was very much restricted. In 1793 free negroes were forbidden to come into the State from any source to take up permanent residence.<sup>97</sup> The penalty upon a "master of a vessel or other person" for bringing in any free negro or mulatto was £100. A free negro living within the State could not go from one town or county to another to seek employment without a copy of his register, which was kept in the court of his county or corporation. Violators of this law were often committed to jail until they made proof of their freedom and paid the jailer's fee. If they were unable to pay this fee, they were hired out to the highest bidder for a time sufficient to pay the charges.<sup>98</sup> By an act of 1801 any free negro who, even though in possession of "free papers," removed into another county or corporation was declared an intruder, and made liable to arrest as a vagrant.<sup>99</sup> By a later act they were denied the right to change their residence from one county or town to another without permission from the court of the county or corporation to which they wished to go.<sup>100</sup> After 1848 no free negro could leave the State for the purpose of education, or go for any purpose to a non-slave-holding State and re-

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<sup>97</sup> Henning, vol. xiv, p. 239. Free negroes travelling as servants to white persons or working on vessels were excepted; but if such negro servant got away from his master or from the ship, the burden of proof was upon him to show why he should not be whipped as an unlawful emigrant (Acts, 1833-1834, p. 79).

<sup>98</sup> Henning, vol. xiv, p. 238; 1 Revised Code, 441; Code of Va. (1849), 467. "Ordered that the Jailor discharge from his custody Aron Jackson and Johnson who were committed to Jail for want of free papers (it appearing to the satisfaction of the court that they are free) upon their paying the Jailor's fees and the costs of this order" (MS. Minutes of Henrico County, no. 27, 1830).

<sup>99</sup> Henning, vol. xv, p. 301; 1 Revised Code, 441. By the vagrancy laws of this time, "persons within the true description of a vagrant" were committed to a public workhouse for a term not exceeding three months, or were hired out by the overseers of the poor (2 Revised Code, 275, 276).

<sup>100</sup> House Journal, 1815-1816, p. 94, for grant of a petition to remove from one county to another; Code (1849), 468, (1860) 522.

turn.<sup>101</sup> Although these laws restricting the movements of the free negro were not enforced with equal thoroughness throughout the State, they were nevertheless enforced sufficiently to render precarious the condition of any violator.

X Possibly the most extraordinary legal right possessed by free negroes at any time during the continuation of slavery was the right to choose a master and to go into voluntary bondage. Liberty to become a slave was one variety of liberty which a white man could not have exercised had he wished to do so. One might surmise that this right possessed for a while by free negroes was of a higher class of rights than the fundamental, inherent rights spoken of by the constitutional fathers; for a free negress who exercised it deprived and divested her posterity of liberty, and subjected both herself and it to perpetual tyranny.

Regardless of what may be said of the nature of this very unusual right, it is a fact that free negroes did not possess it until near the end of the slavery regime. Before 1856 a special act was deemed necessary to render legal the slavery of a free negro who of his own will selected a master. A number of such private acts, making it lawful for certain free negroes, whose names were mentioned in the acts, "to select a master or mistress," were passed in the first half of the decade of the fifties.<sup>102</sup> In 1856 a general act was passed making it lawful for any free colored man over twenty-one and any free colored woman over eighteen years of age to select a master or a mistress.<sup>103</sup> A free negro desiring so to alter his status could file a signed petition with the circuit judge stating the name of the proposed master or mistress. The petition would be posted for one month at the door of the court-house; if the judge was satisfied that there was no fraud, he would grant the request and fix a value on the petitioner. When one half of the designated price was paid into the public treasury, the petitioner became as much the

<sup>101</sup> Acts, 1847-1848, p. 119.

<sup>102</sup> Ibid., 1853-1854, p. 131; 1855-1856, p. 278.

<sup>103</sup> Ibid., 1855-1856, p. 37 et seq.

absolute property of his chosen master as if he had been born a slave. The rule that the status of a child followed the status of the mother at the time of the birth of the child was applicable to the offspring of free colored females who elected to be slaves.

Hard as was the lot of some free negroes in Virginia between 1856 and 1861, the courts had not many petitioners seeking the refuge of slavery. The reports of the auditor who took account of the receipts of the treasury from this source show that not more than a score of free negroes took advantage of their opportunities under the act of 1856. For the year ending September 30, 1859, \$2308.91 was received into the treasury as receipts of the sale by the local courts of four free negroes.<sup>104</sup> The report for the fiscal year ending September 30, 1860, shows that three negroes went into voluntary bondage, and that \$902.50 was received by the State from their purchasers.<sup>105</sup>

Thus far in this chapter attention has been confined to the question of the extent and degree of protection over property and liberty enjoyed by the free negro under the laws of Virginia. A question no less essential to a full treatment of the free negro's legal status is the extent of his participation in the affairs of the government. In what capacities could he, and did he, lend support to that government which afforded him the measure of benefits already described?

From a very early date in the history of the colony up to the close of the Civil War military service was required of the free negro. As early as 1723 there were some free negroes enlisted in the state militia, and they were, for that reason, permitted to keep one gun, powder, and shot.<sup>106</sup> During the last war between the English and the French for supremacy in America free negroes were employed in the Virginia service as "drummers, trumpeters, or pioneers or

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<sup>104</sup> House Documents, 1859-1860, no. 5, p. 423.

<sup>105</sup> Ibid., 1861, no. 5, p. 652.

<sup>106</sup> Henning, vol. iv, p. 131.

in such other servile labour as they shall be directed to perform."<sup>107</sup>

In the War of Independence the free negro in Virginia performed a worthy and useful service.<sup>108</sup> The recruiting laws made eligible for service "all male persons, hired servants and apprentices above the age of sixteen and under fifty,"<sup>109</sup> but did not permit the enlistment of slaves or of servants bound to serve till thirty-one years of age.<sup>110</sup> That free negroes were enlisted under these laws there is no room for doubt. A letter written April 24, 1783, to the governor by William Reynolds, commissary of military stores, states that James Day had been accused of "transgressing in defrauding a black soldier and through a hasty & rather unfair hearing was ordered to prison where he now lies punishing."<sup>111</sup> In 1777 an act of Assembly designated drumming, fifeing, and pioneering for the employment of the free mulattoes of the company.<sup>112</sup> Runaway slaves pre-

<sup>107</sup> Henning, vol. v, p. 17 (1748); vol. vi, p. 533 (1755); vol. vii, p. 95 (1757).

<sup>108</sup> Cf. G. H. Moore, *Historical Notes on the Employment of Negroes in the American Army of the Revolution*, p. 16.

<sup>109</sup> *Proceedings of Convention of Delegates for the Counties and Corporations of the Colony of Virginia, 1775*, p. 36.

<sup>110</sup> Henning, vol. ix, pp. 81, 346, 592; MS. Petitions, Prince William County. The enforcement of this act excluding servants gave rise to the following statement of certain officials in a petition to the legislature: "Jesse Kelly, a mulatto man bound agreeably to act of assembly to Lewis Lee until the said Kelly should arrive at the age of thirty-one years . . . was enlisted as your petitioners believe they had a right to do by act of May session, 1777." By the act referred to, "Apprentices and servants could be enlisted" (Henning, vol. ix, p. 275). Strictness was shown also in enforcing the law against the enlistment of slaves. A court martial was held in Goochland County, March 19, 1781, to try Colonel Jolly Parrish on the accusation of having "enlisted a slave as a substitute for his division knowing him to be so." Parrish pleaded that he believed the negro to be a free man; but the evidence showed the contrary, and Parrish was cashiered (*Calendar of Virginia State Papers*, vol. i, p. 582).

<sup>111</sup> *Calendar of Virginia State Papers*, vol. iii, p. 472.

The following advertisement appeared in the *Virginia Gazette* for March 7, 1775: "Deserted the following recruits from King William County: Copeland a white man & William Holmes a mulatto about 45 yrs of age is about 6 ft high. A Guinea reward for the white man as a Pistole for Holmes." (A bound volume of the *Virginia Gazette* in the Library of the Johns Hopkins University.)

<sup>112</sup> Henning, vol. ix, p. 268.

tending to be free were accepted for enlistment to an extent that demanded in 1777 an act which required of every negro a certificate from a justice of the peace that he was a free man before he could be admitted into the army.<sup>113</sup> Some white slave-owners preferred to offer their slaves as substitutes rather than render personal service in the army. In order to induce the negroes to enlist and to get them accepted they were presented for substitutes as if they were free. When the war was over, a law was passed to make good the promise of such masters by declaring free all negroes who had served in the war, and by further providing that any such negro held as a slave could recover damages by a suit at no expense to himself.<sup>114</sup>

There were some free negroes in Virginia who took part in the War of 1812. For example, Lewis Bowlagh, a Virginia free negro, served for a time in the United States army, and was transferred to the squadron of Commodore John Shaw, where he served until the close of the war.<sup>115</sup> A good many were drafted into the Confederate service in the War of Secession. All male free negroes between the ages of eighteen and fifty years were held "liable to per-

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<sup>113</sup> Hening, vol. ix, p. 280. The Virginia Gazette for April 14, 1783, contained an advertisement over the name of Henry Skipwith which offered a "handsome reward" for the apprehension of a mulatto slave who had run away from his master and had been received as a substitute in the continental army. He "reenlisted for the war last fall," says the notice, "went with the troops to Winchester from whence he deserted. . . . Since his desertion he has cut off his forefinger of his right hand in order to marry a free woman near Pine Creek Mill in Powhatan County, who had determined never to have a husband in the continental army, and supposed this mutilation would procure him a discharge."

<sup>114</sup> Hening, vol. xi, p. 308 (1783). It should be observed that the law held these negroes to be free from the time they enlisted, and that it was passed to protect them in their right to freedom and not in any sense to confer freedom upon them. The few slaves that, contrary to law, were enlisted as slaves were unaffected by this act. To receive freedom for their services in the cause of independence, slaves had to obtain the passage of special acts (*ibid.*, vol. xiii, pp. 103, 619; Virginia Historical Collections, vol. iv, p. 309). See the petition of Saul, a slave who served in the American army both as a soldier and as a spy among the British (MS. Petitions, Norfolk County, B 4314). Compare also Petition B 4051, New Kent County; B 314, Norfolk County.

<sup>115</sup> MS. Petitions, Henrico County, 1816, A 9353.



form any labor or discharge any duties with the army or in any connection with the military defenses, producing and preparing materials for war, building roads, etc."<sup>116</sup> Such free negroes as were engaged in the public service were subject to the military rules, which were explained especially for their benefit by the officers of the army. In both the Confederate and the United States navies service was performed by Virginia free negroes.<sup>117</sup> The positions they filled were doubtless of the lowest rank, and the services performed of a menial or routine nature, as indeed was most of their military service throughout the entire period under consideration.

In the matter of taxation, also, the free negro stood in relation to the government as its supporter. Far from being exempt from taxation, he was usually required to pay a higher poll-tax than the free white man. As early as 1668 a question arose as to whether free negro women should be exempted from capitation taxes as English women were. The legislature declared in an act that they ought not "in all respects to be admitted to full fruition of the exemptions of the English," and that they were still liable to payment of taxes.<sup>118</sup> In 1769 a petition signed by free negroes and

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<sup>116</sup> Acts, 1861-1862; Senate Bill no. 129, among pamphlets relating to the Confederate government, in Virginia State Library.

Joseph Tinsley, a freeborn negro of Hanover County, was drafted into the Confederate service, and was at first assigned to the duty of keeping the telegraph lines in repair. He was later put to driving a government wagon. An aged antebellum free negro living (1910) at 208 Broad Street, Richmond, says that his father was drafted for service in the Confederacy.

<sup>117</sup> MS. Petitions, A 9353; cf. Hening, vol. xiii, p. 103. John Miller, at one time a colored statesman of the reconstruction period, and in 1910 overseer of laborers in the United States Navy-yard at Portsmouth, gave the following account of his life: Born of free parents in Portsmouth, Virginia, August 15, 1839; worked on a farm when a boy; served for one year W. W. Davis, a groceryman; went into the service of the United States Navy in 1858; was on board the Cumberland when it was attacked by the Merrimac; was discharged at the expiration of his time; went to Boston, reenlisted, and served to the close of the war. He soon got a position in the navy-yard, where he has since remained in the service of the United States Government.

<sup>118</sup> Hening, vol. ii, p. 267; vol. iv, p. 133. Only white women and children under sixteen years of age were exempted from the pay-



mulattoes was presented to the legislature praying that the wives and daughters of the petitioners might be exempt from taxation.<sup>119</sup> It met with a ready response in the law-making body, and an act was passed which, after declaring that the former law was very burdensome to such negroes, mulattoes, and Indians and derogatory to the rights of free-born subjects, exempted "from the payment of any public, county, or parish levies all free negro, mulatto, and Indian women and all wives other than slaves of free negroes, mulattoes and Indians."<sup>120</sup>

Male free negroes were of course still subject to the payment of taxes on the same basis as were white males. It appears that collecting from them offered unusual difficulties, which the legislature endeavored to meet in 1782 by a law providing that any free negro who failed to pay the levies should be hired out by the sheriff upon the order of a county court for a time sufficient to pay all back taxes, provided he had not sufficient property upon which distress could be made for the amount.<sup>121</sup> In 1787 capitation taxes were abolished.<sup>122</sup> The burden of the revenue was placed upon property, and this burden was borne by free negroes just in proportion as they were property owners. It does not appear that there was ever any legal discrimination against free negroes in the taxation of their property. They paid the same rate on their possessions as did white property owners.<sup>123</sup>

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ment of poll-taxes, with the exception of a few individuals who were exempted by special act (*ibid.*, vol. ii, p. 84; vol. iii, p. 259). In the seventeenth century the taxes were principally polls assessed upon "every master of a family and every freeman." The taxes upon servants were paid by the master or owner (*ibid.*, vol. i, p. 143).

In 1666, when the entire colored population in Virginia was between one and two thousand, there were as many as nine negroes in Northampton County who paid their own taxes (*Virginia Magazine of History*, vol. x, pp. 194, 254).

<sup>119</sup> *Journal of the House of Burgesses*, vol. v, p. 198.

<sup>120</sup> *Hening*, vol. viii, p. 393.

<sup>121</sup> *Ibid.*, vol. xi, p. 40.

<sup>122</sup> *Ibid.*, vol. xii, p. 431.

<sup>123</sup> Land books of the various counties of Virginia, in the keeping of the state auditor of public accounts, Richmond. For the year 1856 Reuben West, a free colored man of Richmond, paid \$17.62 on

In 1813, however, discriminations in capitation taxes were again renewed by laying a special poll-tax of \$1.50 upon all male free negroes above sixteen years of age, except such as were bound as apprentices.<sup>124</sup> This rate was continued till 1815, when it was raised to \$2.50 per poll and applied to all male free negroes between the ages of sixteen and forty-five.<sup>125</sup> The occasion for levying this poll-tax was the need for an increased revenue brought about by the War of 1812. The reason for levying it upon free negroes only may have been a widespread desire and purpose, strong at this time, to get rid of them. A tax of \$2.50 assessed upon the most active, and therefore the most objectionable, free negroes was supposed to operate to induce some to leave the State, and to reduce others, who refused to pay, to a state of servitude.<sup>126</sup> Rigid enforcement provisions were made which authorized the sheriff to hire out any free colored tax delinquent till the required amount plus five per cent commission should be raised.<sup>127</sup> Although some free negroes allowed unpaid assessments to reduce them to servitude, these capitation taxes were collected with remarkable success. In 1814 \$8322 was paid into the treasury by 5547 free negroes, or about ninety per cent of the male free negroes within the taxable age. In 1815, when the rate was \$2.50 instead of \$1.50, as in the two preceding years, and only such as were between the ages of sixteen and forty-five were taxable, 4023 free negroes paid their assessments, which amounted to \$10,057.50,—or a sum

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real estate, the assessed valuation of which was \$4420. Scott Clemenze, free colored, paid \$22.72 on property valued at \$5680. The free colored population of Richmond paid in this year \$286.81 on property assessed at \$71,702.50.

<sup>124</sup> Acts, 1812-1813, p. 20.

<sup>125</sup> Ibid., 1814-1815, p. 8.

<sup>126</sup> House Journal, 1816-1817, p. 90; Alexander, p. 63; House Journal, 1804, December 3.

<sup>127</sup> Acts, 1814-1815, p. 61. If the free negro failing to pay the tax had property, distress was made upon that before hiring him out (1 Revised Code, 431). By the Code of 1860 the minimum price per day at which a free negro could be hired to raise back taxes was fixed at ten cents, and five years was made the limit of time for their collection (p. 522).

which was equal to the amount received into the treasury from lawyers' licenses or from the tax on carriages, and was one and a half per cent of the total revenue of the State.<sup>128</sup> During the three years when free colored men were paying a high poll-tax the white inhabitants were paying none.

The capitation tax on free negroes was dropped in 1816, after which for twenty years the assessments made on their small property holdings were the sum of their contributions to the public revenue.<sup>129</sup> In 1850 a tax of one dollar was levied annually upon all male free negroes between the ages of twenty-one and fifty-five.<sup>130</sup> According to the provisions of this law and one of 1853, this tax was to have been used for colonizing free negroes in Liberia, but it seems that only small amounts were ever paid out for that purpose. The disbursements of the treasury for the fiscal year ending October, 1858, show that \$2100 was the amount spent in colonization. Between 1850 and 1853 less than \$2000 per annum was expended for the purpose. The balance of the funds arising from the taxation of free negroes remained in the treasury for public purposes.<sup>131</sup> This levy continued in force for ten years, and was regularly collected from the free colored taxables with about the same success that similar assessments were collected from white taxpayers.<sup>132</sup>

In 1860 a capitation tax of eighty cents was levied upon all free male persons, white and colored, above the age of twenty-one years. The former levy of one dollar per head on free negroes had not been repealed, and when a question

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<sup>128</sup> Auditor's Report for 1815-1816; Acts, 1815-1816, p. 88.

<sup>129</sup> In the constitutional convention of 1829-1830 Leigh remarked that free negroes were included as taxpayers, "though it is well known that they contribute little or nothing to the treasury. They should be excluded from the lists of taxpayers" (Proceedings and Debates, 1829-1830, p. 152). Joynes, of Accomac County, said "Instead of contributing to the revenue they are a perfect nuisance" (*ibid.*, p. 211).

<sup>130</sup> Acts, 1849-1850, p. 7.

<sup>131</sup> Auditor's Report for 1859-1860, p. 407; Message of Governor Johnson, in House Documents, 1853-1854, no. 1.

<sup>132</sup> The average amount contributed to the public treasury from 1850 to 1860 by free negroes varied between \$9000 and \$13,000 (Auditor's Report for 1854-1855, p. 6; for 1861, no. 5, pp. 653, 669; for 1859-1860, p. 401 et seq.).

arose as to whether one or the other or both of these taxes should be collected, it was decided in favor of collecting both assessments. The collections at \$1.80 per head on free negroes for 1860 amounted to \$13,065.22.<sup>123</sup> The revenue act of 1861 declared that no more collections should be made under the law of 1853, thus leaving the tax on male free negroes over twenty-one years of age at eighty cents per poll.<sup>124</sup> The war revenue acts raised the rate rapidly. In 1862 adult male free negroes were paying \$1.25 per capita, and the following year \$2. At the latter rate they contributed in 1863 \$11,554 to the public treasury.<sup>125</sup> After 1860 the poll-tax assessments were uniform for whites and free blacks.

✕ The services of the free negro in official capacities were not demanded or accepted in Virginia. In the seventeenth century a few seem to have been entrusted with minor offices. The justices of Lancaster County appointed as beadle a negro whose duty it was to inflict punishment by stripes upon those whom the court adjudged deserving of corporal punishment.<sup>126</sup> In 1660 a testator nominated as executor of his will and as guardian of his foster daughter a negro whose freedom was stipulated in the will.<sup>127</sup> The court, however, did not confirm the nomination. In at least one instance in the last decade of the seventeenth century a negro acted as surety.<sup>128</sup> All office-holding by free negroes was stopped by an act of Assembly of 1705 declaring that "no negro, mulatto or Indian shall presume to take upon him, act in or exercise any office, ecclesiastic, civil or military."<sup>129</sup> The penalty for violation was £500. Even the ability of a free negro to become a legal witness was lim-

<sup>123</sup> Auditor's Report for 1861, no. 5; Code (1860), p. 243 n.

<sup>124</sup> Acts, 1861, p. 4.

<sup>125</sup> Auditor's Report for 1863; Acts, 1862-1863.

<sup>126</sup> MS. Court Records of Lancaster County, 1652-1657, p. 213, cited in P. A. Bruce, *Economic History*, vol. ii, p. 128.

<sup>127</sup> MS. Court Records of York County, 1657-1662, pp. 211, 217, in Virginia State Library.

<sup>128</sup> Ibid., 1689-1698, p. 58; P. A. Bruce, *Economic History*, vol. ii, p. 127.

<sup>129</sup> Henning, vol. iii, p. 251.

ited.<sup>140</sup> By this law of 1705, negroes were forbidden to be witnesses in any case whatsoever; but it was found that this disability afforded a shield for dishonest free negroes who avoided the payment of their just debts for the reason that other free negroes were not admitted as witnesses. Therefore, in 1744 the law was amended so that "any free negro, mulatto or Indian being a Christian" should be admitted as a witness in both civil and criminal suits against any negro, mulatto, or Indian, slave or free.<sup>141</sup> But to allow free negroes to be witnesses even in civil suits to which a white man was plaintiff against a negro defendant was discontinued in 1785; after that time they were competent witnesses in pleas of the Commonwealth for or against negroes or in civil pleas where free negroes alone were parties, and in no other cases whatsoever.<sup>142</sup>

Before any negro could become a witness in any case he had to receive the following extraordinary charge: "You are brought hither as a witness, and by the direction of the law I am to tell you, before you give your evidence, that you must tell the truth, the whole truth, and nothing but the truth; and that, if it be found hereafter that you tell a lie, and give false testimony in this matter, you must for so doing have both your ears nailed to the pillory and cut off, and receive thirty-nine lashes on the bare back well laid on at the common whipping-post."<sup>143</sup> Some time before 1849 this special injunction against lying was dropped.

Prior to 1723 there were no legal discriminations against free negroes in the limitation or extension of the suffrage.

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<sup>140</sup> Andrew Burnaby mentions the exclusion of the evidence of negroes as one of the laws "which make it almost impossible to convict a planter or white man of the death of a negro or Indian" (p. 54 n.).

<sup>141</sup> Henning, vol. v, p. 245.

<sup>142</sup> Ibid., vol. xii, p. 182; 1 Revised Code, 422; Code (1849), 663. An interesting case arose in the circuit court of King William County in 1835 in which a white man in an action for debt against J. Winn, a free negro, used as witnesses two free negroes. Winn appealed to the supreme court of appeals on the ground that free negroes were not competent witnesses in the suit. The court sustained the negro's claim (6 Leigh, 74).

<sup>143</sup> Henning, vol. vi, p. 107; 1 Revised Code, 431.

Elections in Virginia in the seventeenth century were conducted in a very democratic fashion, in this respect resembling mass-meetings more than modern elections in which tickets and ballot-boxes figure so conspicuously. The sheriff presided over or governed the voters assembled at a voting precinct, and determined the choice of the electorate either "by view" or by subscribing the names of the voters under the name of the candidate for whom they openly declared their preference.<sup>144</sup> It was the general feeling in Virginia well up to the close of the seventeenth century that it was "something hard and unagreeable to reason that any persons shall pay equal taxes and yet have no votes in elections."<sup>145</sup> Hence all freemen, and servants "having served their tyme," were permitted to take part in elections provided they would "fairly give their votes by subscription and not in a tumultuous way."<sup>146</sup> There is no reason or evidence which would lead to a belief that the free negroes in the colony were excluded from these "free elections"<sup>147</sup> to which freed servants were admitted.

In 1670, in accordance with the wishes of the representatives of the restored English monarch, but contrary to the feelings of the masses, the principle and practice of universal suffrage were abandoned. Voting privileges were restricted to freeholders and housekeepers of certain qualifications, with the avowed purpose of disfranchising persons recently freed from servitude; these were thought to have little interest in the country, and "oftener make tumults at the election to the disturbance of his majesty's peace than provide for the conservation thereof by making choyce of persons fitly qualified for the discharge of soe great a trust."<sup>148</sup> The disfranchisement of a part of the rabble was a cause of popular discontent, a fact evidenced by the repeal of the restrictions by the Assembly, which was under the

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<sup>144</sup> Henning, vol. iii, p. 172.

<sup>145</sup> Ibid., vol. i, p. 403.

<sup>146</sup> Ibid., vol. i, p. 403; vol. ii, p. 280.

<sup>147</sup> "Description of the Province of New Albion," in Force Tracts, vol. ii, p. 30.

<sup>148</sup> Henning, vol. ii, p. 280.

influence or domination of the liberal leader, Nathaniel Bacon.<sup>149</sup> When the conservative government regained control, Bacon's laws were repealed, and a statute was enacted which restricted the suffrage further than it had ever been restricted.<sup>150</sup> Previously, freeholders and housekeepers could vote, but now only freeholders could exercise that right.

From the date of this act, 1676, to 1723 the possession of a freehold was a prerequisite to the exercise of the elective franchise. Although the laws specifically stated that "no woman, sole or covert, infants under the age of twenty-one years, or recusant convicts, being freeholders," should be allowed to vote, no discrimination was made against freeholders of color.<sup>151</sup> The restrictions would not have eliminated all free negroes, for some at that time were freeholders. A freeholder was defined as a person who had "an estate real for his own life or the life of another, or any estate of any great dignity,"<sup>152</sup> which meant that the possession of almost any property entitled a man to voting privileges.

It is almost certain that some free negroes exercised the suffrage rights under these provisions, for in 1723 a law was enacted which specifically denied to free negroes the right to vote. The act declared that "no negro, mulatto, or Indian shall hereafter have any vote at the elections of burghesses or any election whatsoever."<sup>153</sup> When this act was referred by the Board of Trade to Richard West for the consideration of its legal aspects, he remarked: "I cannot see why one freeman should be used worse than another merely because of his complexion. . . . It cannot be right to strip all free persons of black complexion from those

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<sup>149</sup> Henning, vol. ii, p. 356.

<sup>150</sup> Ibid., vol. ii, p. 425.

<sup>151</sup> Ibid., vol. iii, p. 172.

<sup>152</sup> Ibid., vol. iii, p. 240.

<sup>153</sup> Ibid., vol. iv, p. 133. As revised in 1762, the law provided that any free negro or mulatto or other person not having the right to vote, who should "presume to vote or poll at any such election, shall forfeit and pay 500 pounds of tobacco" (ibid., vol. vii, p. 519).

rights which are so justly valuable to freemen."<sup>154</sup> His protest was overruled; but an order was passed by the Board of Trade and Plantations directing "that a letter be wrote to the Governor to know what effect the act . . . by which free negroes are deprived of voting in all elections had."<sup>155</sup> A draft of such a letter was presented to the board and agreed to on December 10, 1735. Evidence is wanting as to what effect the act had, but it marked the close of the period prior to the adoption of the Fifteenth Amendment to the Constitution of the United States when negroes could vote. By the first three constitutions of the Commonwealth of Virginia voting privileges were restricted to white males of certain qualifications.<sup>156</sup>

The question whether the free negro in Virginia was a citizen either of the Commonwealth or of the United States is one that can be answered only when it has been made clear what is connoted by the word "citizen." The free negro was always a person in the eyes of the law, and could maintain at law certain rights of personal liberty and property. He was undoubtedly a national, a subject of Virginia and of the United States. If by the word "citizen" is meant a subject having full civil and political rights, the free negro was not a citizen of the Commonwealth of Virginia, for after 1723 he could not bear witness except in cases in which negroes alone were parties; he could not be a juror or a judge; he could not bear arms without special permission, and even though he owned property and paid taxes he could not vote or hold office.

If we attempt to answer the question by reference to the statutes and constitutions, we are confronted by the use of the word "citizen" in a variety of senses. In an act of 1779 it was declared that "all white persons born within this

<sup>154</sup> E. D. Neill, *Virginia Carolorum*, p. 330; see S. B. Weeks, "The History of Negro Suffrage in the South," in *Political Science Quarterly*, vol. ix, p. 671.

<sup>155</sup> Sainsbury Transcripts from the British Public Record Office, vol. i, p. 158.

<sup>156</sup> Constitution of 1776, art. 7; constitution of 1830; constitution of 1850.



Commonwealth and all who have resided therein two years . . . shall be citizens of this Commonwealth."<sup>157</sup> This act was repealed and supplanted by an act of 1783 which declared that "all free persons born within the territory of this commonwealth shall be deemed citizens of this commonwealth."<sup>158</sup> George Bancroft says that the treaty of peace between the American Commonwealths and Great Britain "as interpreted alike in America and England . . . included free negroes among the citizens."<sup>159</sup> In 1785 the General Assembly used the word in a sense which included free negroes in the citizen body. A bill being before the Assembly defining the part of the citizen body which should have the right to vote, and attention being called to the necessity of excepting free negroes and mulattoes, the words "every male citizen" were changed to read "every male citizen other than free negroes or mulattoes."<sup>160</sup> Judge Tucker observed in 1796 that "emancipation does not confer the rights of citizenship on the person emancipated; on the contrary, both he and his posterity of the same complexion with himself must always labor under many civil incapacities."<sup>161</sup>

If free negroes in Virginia were citizens in the meaning of the clause of the Federal Constitution which provides that "citizens of each State shall be entitled to all privileges and immunities of citizens of the several States," the constitutional guaranty was of no practical value to the Virginia free negroes against discriminatory action of state governments in whose domains they might attempt to travel or reside. "Citizens of the United States," said Chief Justice Taney in the *Passenger Cases*,<sup>162</sup> "must have the right to pass and repass through every part of it without interruption as freely as in [their] own States." In *Crandall v.*

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<sup>157</sup> Hening, vol. x, p. 129.

<sup>158</sup> Ibid., vol. xi, p. 323; vol. xii, p. 263.

<sup>159</sup> History of United States, author's last version, vol. v, p. 579.

<sup>160</sup> House Journal, 1785, p. 96.

<sup>161</sup> St. G. Tucker, *A Dissertation on Slavery*, p. 75.

<sup>162</sup> 7 Howard, 492.

Nevada<sup>163</sup> the Court sustained this view, holding that the right to pass through a State by a citizen of the United States is one guaranteed to him by the Constitution. But throughout the first sixty-five years of the nineteenth century every branch of the government of Virginia participated in making or enforcing restrictions upon the liberty of free negroes to move from place to place or to go from the State and return. When a bill was introduced in the Virginia legislature providing for the deportation of free negroes without their consent, the argument that it was unconstitutional was feebly made, but General Brodnax, a leading member of the House, scoffing at the idea, asserted that the Constitution was about to be worn threadbare. "In truth," said he, "free negroes have many *legal* rights but no constitutional ones." There is no doubt that the opinion of the tribunals before whom the legal rights of free negroes were to be tested and applied was in agreement with this assertion.

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<sup>163</sup> 6 Wallace, 35.

## CHAPTER V

### THE SOCIAL STATUS OF THE FREE NEGRO

The three principal elements in the population of Virginia to which the free negro had to adjust himself were the whites, the native Indians, and the negro slaves. A discussion of the social relations of the free negro class with each of these three other elements of the population of the State in the order named may well occupy a place of first consideration in this chapter.

If prejudices did not exist in the minds of the white inhabitants of Virginia against persons of the black race before the coming of the negro, they were not long in springing up after the two races met on Virginia soil. From the very first mention by whites of Africans in Virginia special care was taken, in writing or in speaking of them, to designate their race or color. In the earliest records of the courts and the parishes they were carefully distinguished from other persons by such words and phrases as "negroes," "negro servants," and "a negro belonging to" such a one. As early as 1630 the conduct of a white man who had violated a rule of strict separation of the white and black races was denounced as an "abuse to the dishonor of God and shame of Christians," and in atonement for such conduct the white man received a sound whipping and was required to make a public apology.<sup>1</sup> In the case of a similar violation of decency and standards of race purity in 1640 the guilty white man was compelled to "do penance" in the church, and the negro woman was whipped.<sup>2</sup> So prominent and uncouth were the physiological characteristics and so

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<sup>1</sup> Hening, vol. i, p. 146.

<sup>2</sup> Ibid., vol. i, p. 552.

rude were the manners of the African emigrants that before the end of the seventeenth century many of the white colonists came to regard them as not of the human kind.<sup>3</sup>

This prejudice against the negro was not the result of his servile station; for in that respect he was on a par with a large part of the white population. Freedom, therefore, was not sufficient to make a negro servant or a negro slave the social equal of the whites. By the middle of the seventeenth century there were negroes who were free from all forms of legal servitude or slavery, but they were not absorbed into the mass of free population. Their color adhered to them in freedom as in servitude, and the indelible marks and characteristics of their race remained unchanged.<sup>4</sup> In 1668 the law-making body of the colony gave unmistakable sanction to the exclusion of the free negroes from social equality in a declaration that "negro women set free, . . . although permitted to enjoy their freedom, yet ought not in all respects to be admitted to full fruition of the exemptions and impunities of the English."<sup>5</sup>

Yet, in spite of strong racial antipathies, there were some illicit relations between shameless white persons and negroes, by reason of which it was deemed necessary as early as 1662 to enact legislation concerning the status of mulatto children. In 1691 a law prescribed for "any white woman marrying a negro or mulatto, bond or free," the extreme penalty of perpetual banishment.<sup>6</sup> The strength of public sentiment was soon tested in the matter of enforcing this law in the case of Ann Wall, an English woman, who was arraigned in the county court of Elizabeth City on the charge of "keeping company with a negro under pretense of marriage."<sup>7</sup> Upon conviction, she and two of her mulatto chil-

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<sup>3</sup> M. Godwyn, *Negro's and Indian's Advocate*, suing for their Admission into the Church, p. 23 et seq.

<sup>4</sup> Compare G. Bancroft, *History of the United States*, ed. 1843, vol. iii, p. 410.

<sup>5</sup> Henning, vol. ii, p. 267.

<sup>6</sup> Ibid., vol. iii, p. 87.

<sup>7</sup> MS. Court Records of Elizabeth City County, 1684-1699, p. 27, in Virginia State Library. In 1737 a negro who attempted to assault a white girl was compelled to stand in a pillory for an hour, was

dren were bound for terms of service to a man living in Norfolk County, and a court order was recorded to the effect that in case she ever returned to Elizabeth City County she should be banished to the Barbadoes.<sup>8</sup> Whether the "abominable mixture or spurious issue," as the mulatto was called, was of slave or free negro parentage, it was equally detested by respectable white persons.

In the seventeenth century there were a few free negroes of exceptional merit who were accorded, in all relations not involving or leading to a blending of the races, social privileges about equal to those accorded to freed white servants. A few were prosperous owners of personal and real property, respected by white persons, dealt with by white men in business relations, and permitted to participate in elections,—facts which seem to indicate that for a while the prejudices of the white inhabitants against the negroes went only to the extent of preserving the Teutonic blood from contamination, and did not at first deny to the African freedom of opportunity to take such station in other relations as his individual merit enabled him to assume. At that time the theory that the negro was fit for nothing but slavery or some servile capacity had not been so carefully elaborated nor so generally applied as it was in the eighteenth and nineteenth centuries. Although precluded from the possibility of intermarrying with white persons, the negro freed from servitude or slavery had about the same industrial or economic opportunities as the free white servant. But as slavery advanced toward a more complete inclusion and subjection of the negro race in Virginia, the social and industrial privileges of the free negro were gradually curtailed. The denial to him, by laws passed in 1723, of the right to vote, the right to bear arms, and the right to bear witness is proof of the fact that prejudice had extended beyond a demand for race separation and race purity to an imposition upon the negro of a low and servile station.

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"pelted by the populace, and afterwards smartly whipped" (Virginia Gazette, August 19-26, 1737; quoted in Virginia Magazine of History, vol. xi, p. 424).

<sup>8</sup> MS. Court Records of Elizabeth City County, 1684-1699, p. 83.

From 1723 to the end of the colonial period the number of the free negroes was, both absolutely and relative to the other populations, so small that the social status of the class would have been unimportant except for the fact that prejudices accumulating in this period were handed down to the time when the free colored class became numerically important. Except for natural procreation, the principal additions or recruits to this class throughout this period were the result of illegitimacy. There was no tendency to attribute to a few free negroes and mulattoes of such low origin any higher social standing than that occupied by more than ninety-nine per cent of their race and color. Too small and of too low an origin to preserve for itself, by the formation of an exclusive caste, higher social rights than slaves, the free colored class was nevertheless sufficiently large to pass on to the larger free negro class of the period of the Commonwealth all the disabilities and social disadvantages that it had gathered to itself for a hundred years. The freedom which masters were to be allowed to confer upon their slaves under the act of 1782 was the freedom of the colonial free negro and no more. Even those persons who professed a desire to apply to the slaves the principles of natural and equal rights had no intention or desire to exalt the manumitted slave to social equality with the whites. Chastellux, travelling through Virginia in the early eighties of the eighteenth century, noticed the inferior social status of the free negroes, and wrote: "In the present case it is not only the slave who is beneath his master, it is the negro who is beneath the white man. No act of enfranchisement can efface this unfortunate distinction."<sup>9</sup>

The free negro population which came to be numbered by tens of thousands in the nineteenth century was as remote from a social plane upon which intermingling or intermarriage with the white race was possible as were the slaves. "A companion to slaves . . . forbidden to intermarry with whites or to bear testimony against them; forbidden to learn

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<sup>9</sup> Vol. ii, p. 99.

to read or to write, or to preach the word of God even to his fellows, to bear arms or to resist assault—in every relation from the cradle to the grave he was never allowed to forget that he was an inferior being.”<sup>10</sup> Illegal marriages or associations of whites with free negroes were so disreputable and disgraceful that they were entered into by the vilest white persons at the peril of chastisement by privately organized bands of white persons supported by community sentiment.<sup>11</sup> The free mulatto class, which numbered 23,500 by 1860, was of course the result of illegal relations of white persons with negroes; but, excepting those born of mulatto parents, most persons of the class were not born of free negro or free white mothers, but of slave mothers, and were set free because of their kinship to their master and owner.<sup>12</sup> \*

When we come to consider the social contact and affiliation of the free negro with the native Indian, the barriers to social affinity and intermixing of races on terms of equality are seen to be less important than those between free negroes and whites. No law forbade the intermarriage of free negroes and Indians, and there existed between them some fundamental grounds of sympathy and mutual appreciation. Both bore the marks of a savage race and had a colored skin; hence they shared the racial antipathy of the whites, although possibly to a different degree. Both were wanting in experience and acquaintance with the manners of civilized life, to which they were being introduced through the agency of an alien race. Both enjoyed liberty to go and come at will; but, unlike slaves, they were dependent upon their own resources for subsistence. Both were, in a way, misfits and discordant elements in a society organized as was that of Virginia, on a basis of slavery,—a society economically and politically complete, with a governing white aristocracy and a class of colored toilers living in a condition of com-

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<sup>10</sup> Message of Governor Smith, 1848-1849, in House Journal, p. 21.

<sup>11</sup> MS. Petitions, Amelia County, 1821, A 781.

<sup>12</sup> MS. Petitions, King William County, 1825, B 1191; Essex County, 1825, A 5396; Halifax County, 1857, A 7724.

plete subjection. While there existed dissimilarities between free negroes and Indians, there was certainly a common bond of union; and it is significant that in the massacre of 1622 not an African perished at the hands of the Indians, although there were at the time of the massacre more than twenty negroes scattered throughout the little colony.<sup>13</sup>

Before 1724 there were in the colony some persons of mixed blood, part negro and part Indian, called mustees or mustizos.<sup>14</sup> A number of reservations of land, containing from a few hundred to many thousand acres, were set apart in the eastern section of Virginia in the seventeenth and eighteenth centuries for the use and enjoyment of the Indians.<sup>15</sup> After a time, these reservations became the common homes of free negroes and the tribesmen for whom they were intended, who associated on terms of social equality. It was said in 1787 of the inhabitants of the Gingaskin reservation<sup>16</sup> that those who were not entirely black had at least "half black blood in them."<sup>17</sup> The place was called Indian Town, but many of the squaws had negroes for husbands, and Indian braves lived with black wives. As a means of improving the social order in Indian Town, the white people thereabouts proposed that no negroes, except the husbands of female Indians, be allowed to remain in the tribe. The town, they said, afforded "a Harbour and convenient asylum to an idle set of free negroes," and was a great nuisance to the public.<sup>18</sup>

In 1744 the Nottaway and kindred tribes possessed about

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<sup>13</sup> McDonald Transcripts from the British Public Record Office, vol. i, p. 46; Hotten, pp. 218-258; Colonial Records of Virginia, Senate Document, 1874, Extra, p. 61.

<sup>14</sup> "Such as are born of an Indian and negro are called Mustees" (H. Jones, *The Present State of Virginia*, p. 37).

<sup>15</sup> Hening, vol. ii, p. 290; P. A. Bruce, *Economic History*, vol. i, p. 492 et seq.; vol. ii, p. 115.

<sup>16</sup> See Hening, vol. viii, p. 414, for facts concerning this reservation in Northampton County. In 1769 it contained six hundred acres. The legislature then passed an ordinance providing for the sale of two hundred acres of this land, the proceeds to be used by the parish to provide for such of the tribe as should become public charges. Compare Hening, vol. ii, p. 13; vol. iii, p. 85.

<sup>17</sup> MS. Petitions, Norfolk County, 1787, B 4865.

<sup>18</sup> Ibid., 1782, B 4865; 1782, B 4845.



20,000 acres of land which they could not, according to law, alienate.<sup>19</sup> In 1821 they still occupied 3370 acres. White persons in the vicinity of this reservation affirmed in 1821 that "their [the Indians'] wives and husbands are free negroes,"<sup>20</sup> and that they had neither prudence nor economy.

As late as 1843 the Pamunkeys possessed sixteen hundred acres of land in King William County. One hundred and forty-three citizens of the county petitioned the legislature to have the lands divided, saying that all but a small remnant of the old Indian tribe was extinct, and that in its place were free mulattoes, all of whom were believed to have one fourth negro blood,—an amount sufficient under the provisions of the code of 1819 to class them as mulattoes.<sup>21</sup> "They are so mingled with the negro race as to have obliterated all striking features of Indian extraction. It is the general resort of free negroes from all parts of the country."<sup>22</sup>

The association and intermarriage of free negroes with Indians was not confined to areas given up to Indians. From an early date mustees were a small constituent element of the population, intermingling with the other inhabitants of the colony.<sup>23</sup> John Dungie, an Indian of King William County, was in 1824 legally married to Anne Littlepage, a mulatto daughter of Edmund Littlepage, esq., a man of considerable wealth. "The husband was a sailor . . . constantly employed in the navigation of the Chesapeake Bay and Rivers of Virginia." His free mulatto wife was heir to a considerable annuity.<sup>24</sup> In a case before the supreme

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<sup>19</sup> Hening, vol v, p. 270.

<sup>20</sup> MS. Petitions, York County, 1821.

<sup>21</sup> Hening, vol. xiv, p. 123; 1 Revised Code, 423.

<sup>22</sup> MS. Petitions, King William County, 1843, B 1207. Petition B 1208 is a counter-petition from the chief men of the tribe, who wish to retain their lands. They admit that some persons not of their tribe are within their boundaries, but claim that the inhabitants generally are of at least half Indian extraction. That members of the Pamunkey tribe to this day (1912) bear in their features evidences of a mixture of the tribe with negroes may be stated on the authority of a prominent citizen of Richmond who has observed them.

<sup>23</sup> Jones, p. 37.

<sup>24</sup> MS. Petitions, King William County, 1825, B 1191.

court of appeals in 1831 we find an attorney making the assertion as an historical fact that Indians had intermarried with negroes.<sup>25</sup>

The names "mustizo" or "mustee" and "mulatto" were not always applied with discrimination, the latter being often used where the former should have been applied.<sup>26</sup> In the censuses no separate enumeration is made of the mustees, but there is no doubt that a considerable element in the free colored population of the nineteenth century was of Indian extraction.

The most congenial companion of the free negro outside of his own class was found among his kinsmen in bondage. The larger part of the free negro class met and mingled with negro slaves on a plane of almost perfect social equality.<sup>27</sup> Prior to 1782 the fact that the free colored persons were few in number would have been sufficient to prevent the formation of an exclusive caste had there been differences between free and slave negroes so radical as to render conditions favorable for such a development. Even when their numbers became sufficiently large for the formation of an exclusive caste, there were absent those differences in economic and political station to make it desirable either for the free negro or the slave class to exclude the other from its social life, the freedom of the free negro being in most lines of activity only nominal. There were lacking to the free negro the better education, the higher standard of wants, and the better opportunities for acquiring wealth and position necessary to supply an actual basis of superiority and to give him higher social rank than that occupied by the slave.

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<sup>25</sup> Gregory v. Baugh, 2 Leigh, 665; cf. also Jenkins v. Tom, 1 Hening and Munford, 123; T. Jefferson, Notes on the State of Virginia, ed. 1801, p. 182.

<sup>26</sup> Virginia Gazette, December 1, 1782. A reward is offered for a runaway slave who, according to the description, was the offspring of an Indian and a negress; but he is called a mulatto.

<sup>27</sup> "The free negroes continue to live with the negro slaves, and never with the white man" (Chastellux, vol. ii, p. 199).

Had it been possible for the free negro to hold himself aloof from the slaves, he might have borne a better reputation among slave owners; for, as will appear later, his connection and his relation with slaves rendered him the object of much undeserved suspicion and criticism. To the slaves themselves the free negro was a welcome visitor; at feasts, barbecues, dances, and negro meetings of every kind he was present to participate on a plane of equality with his slave neighbors. While very few would have exchanged this condition for that of the slave, they rarely ever regarded slavery as the badge of a rank inferior to their own.

It was very common in the nineteenth century and the twenty years immediately preceding for free negroes to marry slaves. Numerous instances can be cited of marriages of free negro women with slave men. A case occurred in Brock County in 1826.<sup>28</sup> A free negress by the name of Rachel married a slave in Alleghany County in 1828.<sup>29</sup> Dilly, a free negro woman of Giles County, was married to a slave husband by whom she had two children.<sup>30</sup> Similar examples may be found in almost any county.<sup>31</sup>

Since the status of the mother became the status of the offspring, it might be supposed that free colored women would have had less aversion to choosing slave husbands than free colored men would have had to marrying slave wives, but that does not appear to have been the case. Numerous examples might be cited to show that the prospect of having children who would be slaves did not deter free negro men from marrying slave wives. Rice Stephens, a freeborn negro, was living in Northampton County in 1843 with a slave wife and three children.<sup>32</sup> Samuel Johnson, a

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<sup>28</sup> MS. Petitions, Brock County, A 2684.

<sup>29</sup> MS. Petitions, Alleghany County, A 651.

<sup>30</sup> MS. Petitions, Giles County, 1829, A 6784.

<sup>31</sup> MS. Petitions, Goochland County, 1840, A 7109. According to the story of Mary Winston, a free negro woman of Hanover County still living (1909), her grandmother and great-grandmother married slaves.

<sup>32</sup> MS. Petitions, Northampton County, B 4905.

free negro of Fauquier County, had a slave daughter who became the wife of a free negro.<sup>83</sup>

Indeed, it is apparent that there were not a few free negroes who preferred a slave to a free wife. Certainly there was less responsibility upon a husband whose wife and children were slaves and were therefore supported by their white owners than upon one whose wife and children had to be provided for by himself. "A freeman," says a pro-slavery editor in 1802, "as soon as he is his own master, marries the female slave of some farmer. He cannot well be prevented from residing with his wife. She feeds him *gratis*."<sup>84</sup> This was the opinion also of a later pamphlet writer who wrote under the pseudonym of "Calx." "Every male free negro," he wrote, "prefers to have a slave wife, and will be so provided, if permitted by too careless indulgence. In this manner he will not only have his wife and children supported by the owner, and a lodging provided for himself, but much of his own food will be obtained from his wife and, directly or indirectly, to the loss of her master."<sup>85</sup>

In addition to the temptation to free colored men to select wives who were sure of support, and who might even partly support their husbands, there was after 1806 another reason why some free negroes might have considered themselves fortunate to be connected by marriage with a slave woman. Such a family connection often prevented a free negro manumitted after 1806 from having to leave the State, according to law, within twelve months from the date of his manumission. If such a free negro husband comported himself well and made a useful laborer in the community, he was sure to have the good will of his wife's master, to whose interest it was to keep his slaves contented in their place. If the free husband stayed in the community, his presence would not only be a guaranty against his slave family making trouble for their master by becoming runaways, but he himself might also become a useful employee of his wife's

<sup>83</sup> MS. Petitions, Fauquier County, 1837, A 5859.

<sup>84</sup> Richmond Recorder, November 10, 1802.

<sup>85</sup> "Calx," p. 5 et seq.

master. If he was forced to leave, he immediately endangered the interest of the master by establishing himself in a border State and inducing his wife and children to join him. Many a free negro petitioning the legislature for permission to remain in the State made a special point of the fact that his wife and children were slaves.<sup>86</sup> Many slave-owners endorsed their petitions, and joined in asking the legislature to grant the privilege asked for. Particularly was it true in counties bordering on Maryland, Pennsylvania, Ohio, and Kentucky that the slave-owners realized and were frank to admit that a free negro, though not desirable on his own part, was more desirable in Virginia than in a border county of an adjoining State.<sup>87</sup>

There is, however, nothing in the facts above stated, nor in truth in any authentic evidence thus far examined, to give support to the contention frequently made by slavery apologists in the nineteenth century, and to this day not infrequently repeated, that slaves generally regarded free negroes as of inferior social rank. The negro "aristocracy," if such there was, was not based on the superiority of slaves over the free negroes, but on the superiority of the wealthy planter's "servants" over the "poor man's nigger."<sup>88</sup> Thomas Bruce, writing in 1891 concerning the happy state of slavery, said: "As a class, happier beings never existed, and they had a most unbounded contempt for a free negro . . . and shunned him as they would a leper, and even to this day that prejudice still exists in the minds of the negro who can recall the days of slavery."<sup>89</sup> Ellen Glasgow, in her novel entitled "The Battle-Ground," depicts Free Levi as a free

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<sup>86</sup> House Journal, 1832-1833, p. 201.

<sup>87</sup> Writing to the legislature to ask that a certain free negro be permitted to remain in the State, fifty-five slave-owners of Harrison County say: "He will take up his residence in the nearest point in Pennsylvania or Ohio and of course will make occasional visits to his family, and from the clamor which is going on in those states upon the subject of abolition we judge that we should have more to fear from that source than from his being permitted to remain among us" (MS. Petitions, Harrison County, 1839, A 8677; see also MS. Petitions, Cumberland County, 1815, A 4728).

<sup>88</sup> A. Bagby, King and Queen County, p. 283.

<sup>89</sup> T. Bruce, Southwest Virginia and the Shenandoah Valley, p. 46.

colored man "who shares alike the pity of his white neighbors and the withering contempt of his black ones."<sup>40</sup> If there is a basis of truth which gave rise to this mistaken belief here and elsewhere expressed, it is in the fact that slave-owners disapproved of the association of their slaves with free negroes, whom they suspected of scattering seeds of discontent in slave quarters. The master of slaves did indeed have a withering contempt for free negroes, but one of the reasons for such a feeling was the realization that his slaves might readily emulate the superior privileges of freedom as exemplified in the free negro. The slaves, being generally of a docile, tractable disposition, may have pretended to regard free negroes as their inferiors, but their "unbounded contempt" was merely an echo.<sup>41</sup>

From one source, however, there sprang up in slaves a certain dislike of free negroes with whom they were required to work, but the feeling was quite different from contempt. When free negroes were employed to work for wages with slaves, as they often were,<sup>42</sup> and to do no harder work than the slaves, the slaves were sometimes envious of the free negroes because of the superior privileges of the latter in the way of recompense. Such dislike for the free negroes on the part of slaves was envious dislike for a superior rather than contemptuous dislike for an inferior.<sup>43</sup>

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<sup>40</sup> P. 148.

<sup>41</sup> William Dunston, slave of John R. Dunston, of Accomac County, married a free negress whose name was Jane Jubilee. In this instance it required not a little determination and self-will for the slave to follow his suit to victory; for he was constantly met by his master's reproachful queries: "Bill, would you marry into that family of Jubilees? They are *free* negroes." This incident, related to the author by C. C. James, of Northampton County, illustrates the way in which masters tried to create in their slaves a dislike for free negroes.

<sup>42</sup> "They [free negroes] are sometimes hired for field labour in times of harvest and on other particular occasions" (Madison's Writings, vol. iii, pp. 310-315).

<sup>43</sup> William E. Waddy, esq., of Eastville, Virginia, born in 1827, and familiar with the facts concerning the relation of free negroes and slaves from his boyhood to the close of the Civil War, vividly recalls that a distaste for working with free negro hired laborers was often manifested by slaves. He was unaware, however, of the existence among slaves owned or observed by him of a feeling of social superiority over free negroes.

The acknowledgment repeatedly made by the enemies of the free negro is alone sufficient to controvert the traditional belief that slaves considered themselves in a superior station or social rank to that of the free negroes. The latter were spoken of as "possible chieftains of formidable conspiracies," and "leaders" in servile outbreaks.<sup>44</sup> Mr. Moore, in the slavery debate of 1832, said, "I lay it down as a maxim not to be disputed, that our slaves, like all the rest of the human race, are now and will continue to be actuated by a desire of liberty."<sup>45</sup> This assumption was constantly made by both antislavery and proslavery advocates, and particularly by that portion of the latter class who regarded the presence of the free negroes as a source of danger to the institution of slavery as well as a menace to the discipline and control of slaves. Antebellum free negroes and their descendants still living are very proud to relate facts concerning their free ancestry; and while the most reliable of the survivors of this class admit that many free negroes were on no higher plane than slaves, they hold to the view that many of the better class of free negroes considered themselves socially superior to any slave. This must indeed have been true of the free negroes who owned considerable property, or owned or hired negro slaves and servants, as did a few in the seventeenth century and many in the nineteenth. It was certainly true of some free mulattoes who because of their white connections had received special opportunities for education and an independent support.<sup>46</sup>

Whether a free negro was to be married to a free person or to a slave, who was legally incapable of making a con-

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<sup>44</sup> Richmond Enquirer, January 18, 1805.

<sup>45</sup> Ibid., January 19, 1832.

<sup>46</sup> In 1857 eight quadroon children belonging to Craddock Vaughn of Halifax County made petition to the legislature for permission to reside in the State notwithstanding the law of 1806, which applied to them. The petitioners affirmed that they had had every care in bringing up, and that they were "beyond the sphere of the free negro class so degraded" (MS. Petitions, Halifax County, 1857, A 7724). See also MS. Petitions, King William County, 1825, B 1191; Alleghany County, 1828, A 651; Halifax County, 1783, A 7551.



tract,<sup>47</sup> legal forms were adhered to, and the nuptial ceremonies observed by white persons were imitated. White ministers officiated at weddings of all classes of colored persons. Free colored candidates for matrimony obtained licenses just as did white persons, and often procured the parlor of a white family as a place for the ceremony. A glance at the records of marriages by the ministers of Henrico parish from 1823 to 1860 will reveal numerous instances of marriages of free colored persons and a few of marriages of free negroes with slaves.<sup>48</sup> Of six marriages solemnized by Rev. Edward Peet in 1831 one was the union of free colored persons; and of sixteen persons married by the same minister in 1832, four were free colored. In 1829 Rev. W. F. Lee married eight white and two free colored persons; in 1833 the record was the same as in 1829; in 1834 he married ten white and two free colored couples; and in 1846, four white couples and one free colored couple.<sup>49</sup>

In the seventeenth century and the part of the eighteenth when the free negro class was so small as to be numbered in hundreds there were to be found examples of well regulated, orderly families, appreciative of the sanctity of the family relations, in which both parents were free colored. The Northampton County records show a few examples as early as 1655.<sup>50</sup> The parish registers of the eighteenth century contain numerous examples of free colored parents

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<sup>47</sup> "It is agreed that slaves have no power [of contract]. Hence the marriages of slaves are void" (Minor, vol. i, p. 168).

<sup>48</sup> L. W. Burton, *Annals of Henrico Parish*, pp. 236-248. For instances of marriages of free with slave negroes, see p. 247: "Morris Harris a free colored man, to Patience, a servant to Mrs. Mary E. Robinson, by Rev. H. S. Kepler, 1855." "Servant" in this register was a euphonious designation for "slave." The entries concerning the marriage of a free colored man with a free colored woman uniformly stated that both were free, as: "Ned lightfoot and Sophy Buck, both free people of color. License bearing date as above." By Rev. W. M. Hart: "Aug. 16, 1825, John Jarvis, a free man of color, and Lucy Marble, a free woman of color. License bearing date Henrico Court, Aug. 1825." For another example, see p. 248.

<sup>49</sup> Burton, pp. 236-244.

<sup>50</sup> MS. Court Records of Northampton County, 1651-1654, pp. 28, 161.



whose children were regularly baptized into the church.<sup>51</sup> When toward the latter part of the eighteenth century and on to the end of the antebellum period the free colored population came to be numbered by tens of thousands, numerous examples of respectable free colored families are to be found. On a petition signed by ninety free colored persons of Richmond in 1823 there were nineteen families represented by the names of both husband and wife.<sup>52</sup> It was thought that a rather large proportion of free colored females, particularly free mulattoes, were unchaste.<sup>53</sup> However this may have been, there is ample documentary evidence to show that in the nineteenth century there was a certain large class of the free colored population the members of which were respectable and observant of decency and regularity in their family relations.<sup>54</sup>

Throughout the period of the colony when the number of free negroes was comparatively small, and even in the nineteenth century before the time of the active propagation of antislavery doctrines, there existed little if any prejudice against the education of free colored persons. In the third quarter of the seventeenth century there was opposition to offering baptism to negro slaves until it was determined by law that the administration of the baptismal rite did not bestow freedom.<sup>55</sup> This objection did not apply, however, to the religious instruction of free negroes or negro apprentices. Before the middle of the seventeenth century provision was made by certain white persons for guaranteeing religious instruction and education to negro servants who would eventually become free.<sup>56</sup> In 1654, when Richard

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<sup>51</sup> Bruton Parish Register, p. 57 ff. Original copy, Bruton Church, Williamsburg.

<sup>52</sup> MS. Petitions, Henrico County, 1823, A 9335.

<sup>53</sup> "Calx," pp. 5-11.

<sup>54</sup> Cf. MS. Petitions, Accomac County, A 42.

<sup>55</sup> Hening, vol. ii, p. 260; Godwyn, p. 11 ff.

<sup>56</sup> General Court Records, printed in *Virginia Magazine of History*, vol. xi, p. 281; MS. Court Records of Northampton County, 1645-1651, p. 82.

Vaughan freed his negroes, he provided in his will that they should be taught to read and to make their own clothes, and that they should be brought up in the fear of God.<sup>57</sup>

In colonial times the Anglican church did a great deal to provide for the religious instruction and baptism of the free colored class. The reports made in 1724 to the English bishop by the Virginia parish ministers are evidence that the few free negroes in the parishes were permitted to be baptized, and were received into the church when they had been taught the catechism.<sup>58</sup> It had been a practice of the seventeenth century to stipulate in the indenture or contract by which a free negro was apprenticed to a master that the master, in return for the negro's service, must provide instruction in the Christian religion in addition to sufficient food, apparel, and lodging.<sup>59</sup> In 1691 the church became the agency through which the laws of negro apprenticeship were carried out.<sup>60</sup> Free mulatto children born of white mothers and any free colored boy or girl without visible means of support were bound by the churchwardens to serve white men for a certain term of years. The custom of the churchwardens of requiring these masters to provide some degree of education for the colored apprentices remained in vogue throughout the colonial period, as is shown by numerous orders of the vestry meetings and orders of the county courts for binding out free colored children. For example, in 1727 it was ordered that David James, a free negro boy, be bound to Mr. James Isdel, "who is to teach him to read ye bible distinctly also ye trade of a gunsmith that he carry

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<sup>57</sup> MS. Court Records of Northampton County, 1654-1655, pp. 102, 103.

<sup>58</sup> Papers Relating to the History of the Church: Westminster parish, p. 261; Lawn's Creek parish, p. 289.

<sup>59</sup> "The church is open to them all" (Report of the minister in Isle of Wight County, in Papers Relating to the History of the Church, p. 274). As a means of encouraging baptism of negro children, a proposition was made to exempt from taxation for four years any negro or mulatto child baptized (*ibid.*, p. 344).

<sup>60</sup> See an indenture to this effect executed by Francis Pott in 1646, in MS. Court Records of Northampton County, 1645-1651, p. 82.

<sup>61</sup> Hening, vol. iii, p. 87.

him to ye Clark's office & take Indenture to that purpose."<sup>61</sup> By the Warwick County court it was "ordered that Malacai, a mulatto boy, son of mulatto Betty be, by the church wardens of this Parish, bound to Thomas Hobday to learn the art of a planter according to law."<sup>62</sup> By the order of the Norfolk County court, about 1770, a free negro was bound out "to learn the trade of a tanner."<sup>63</sup> After 1785 the duty of binding out free colored children was placed upon the overseers of the poor, who required of the masters, according to the laws and the custom, an agreement to teach the apprentice reading, writing, and arithmetic.<sup>64</sup>

In the period between the Revolutionary War and the beginning of the nineteenth century there were two religious societies that were very active in teaching and offering religious instruction to the free negroes, namely, the Quakers and the Methodists.<sup>65</sup> The Quakers set free no inconsiderable part of the slaves manumitted in this period, and the various meetings took official action to see that negroes set free by their members were taught and Christianized.<sup>66</sup> It was in accordance with the advice of the yearly and quarterly meetings of Friends that the monthly meetings extended "a watchful care over those negroes . . . set free within the verge of the monthly meeting, administering counsel and advice particularly to those in their minority" and rendering them temporal and spiritual assistance.<sup>67</sup> In 1781 a

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<sup>61</sup> From the court records of Princess Anne County, cited in *Virginia Magazine of History*, vol. ii, p. 429. See also MS. Minutes of Northampton County, 1754-1757, p. 100.

<sup>62</sup> MS. Minutes of Warwick County, 1748-1762, p. 30, in Virginia State Library.

<sup>63</sup> MS. Orders of Norfolk County, 1768-1771, pp. 232-233. See also *ibid.*, pp. 11, 91; Vestry Book of Saint Peter's Parish, p. 135: an order, 1771; Register of St. Peter's Parish, p. 117.

<sup>64</sup> Hening, vol. viii, pp. 376-377; vol. xii, pp. 28, 29; vol. xvi, p. 124.

<sup>65</sup> The friendship of the Quakers and the Methodists for the negro was mentioned by Randolph in the Federal Convention at Philadelphia, 1787 (Papers of James Madison, ed. by Gilpin, vol. iii, p. 1396).

<sup>66</sup> MS. Minutes of the Hopewell Monthly Meeting, 1777-1791, p. 190.

<sup>67</sup> MS. Minutes of the Fairfax Monthly Meeting, 1776-1802, p. 105 (1776), pp. 110, 243 (1782); MS. Minutes and Proceedings of Goose Creek Monthly Meeting, 1785-1818, p. 533.

committee of Friends appointed by the Warrenton and Fairfax Quarterly Meeting "to have under their Care and labour to promote the Education and religious Instruction of such negroes as have been set free" reported that "a good degree of care and labor had been extended, and that there still remained other work along the same line that must be done."<sup>68</sup> The Methodists were likewise mindful of the spiritual welfare of the negroes, whether free or slave, and were so active in the advocacy of the cause of freedom that they were denied by many slave-owners the opportunity of instructing slaves;<sup>69</sup> but they continued to offer private instruction to free negroes, and to slaves when opportunity was afforded.<sup>70</sup> Besides Quakers and Methodists, there were smaller religious societies, such as Moravians, Harmonites, and Shakers, who, besides giving the negroes religious instruction, taught them many useful industries, and even worked with them in creating a common property.<sup>71</sup>

After the fears of the slave-owners were aroused by the Gabriel insurrection in 1800 and by rumors of a general outbreak, it was thought desirable to curtail the opportunities of the free negroes for acquiring a knowledge of books which might render them propagators of seditious anti-slavery doctrines among the slaves; hence the overseers of the poor were commanded by legislative authority to cease requiring the master or mistress to whom a free negro or mulatto child was apprenticed to teach the child reading, writing, and arithmetic, as had hitherto been the custom.<sup>72</sup>

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<sup>68</sup> MS. Minutes of Warrenton and Fairfax Quarterly Meeting, 1776-1787, p. 123.

<sup>69</sup> Journal of the Rev. Francis Asbury, vol. ii, p. 71; vol. iii, pp. 253, 257; Bennett, p. 547.

<sup>70</sup> "What directions shall we give for the promotion of the spiritual welfare of the colored people?"

"We conjure all our ministers and preachers . . . to leave nothing undone for the spiritual benefit and salvation of them . . . and to unite in Society those who appear to have a real desire of fleeing from the wrath to come; to meet such in class and to exercise the whole Methodist discipline among them" (Annual Minutes, 1787, quoted from H. N. McTyeire, History of Methodism, p. 381).

<sup>71</sup> Madison's Writings, vol. iii, pp. 495, 497.

<sup>72</sup> Hening, vol. xvi, p. 124.

A more rigorous enforcement of the laws against unlawful assemblages of slaves further discouraged efforts to give instruction to negroes, bond or free. Quakers were prosecuted in court for assembling negroes for instruction in their meeting-houses.<sup>73</sup> Probably owing to discouragement thus received and to some relaxation of their former zeal due to other causes, the Friends were not so active in behalf of the negro in Virginia as they had been in the eighteenth century, although they continued to hold a prominent place among his sympathizers and helpers. In 1816 a committee appointed by the Goose Creek Monthly Meeting to inquire into the opportunities for education afforded African children in the homes of Friends reported that "only two instances were found of colored children suitably provided for, and opportunity afforded them of acquiring useful school learning."<sup>74</sup>

In the nineteenth century the Baptist Church, by a less bold assertion of views in opposition to slavery than those advanced by Methodists, avoided the hostility of the slave-owners which fell to the share of the Methodists, and thus gained the larger share of negro evangelization.<sup>75</sup> Even when the laws discouraged negro education, the Baptists did much toward instructing free negroes privately and in Sunday schools,<sup>76</sup> and received them into their churches.<sup>77</sup> In churches where colored persons attended in considerable numbers a section of the pews was set aside for their use, and at all times a strict observance of the color line seems to have prevailed. The condition of the free colored people before 1831 as regards religious and educational advantages is so well shown by a petition to the legislature in 1823 of

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<sup>73</sup> See E. Woods, Albemarle County, in Virginia, p. 111, for instances of indictments of Friends for unlawfully assembling slaves.

<sup>74</sup> MS. Minutes of Goose Creek Monthly Meeting, 1785-1818, p. 534.

<sup>75</sup> In 1835 Professor E. A. Andrews wrote a letter from Fredericksburg saying that the "religious instruction [of the free negroes] has fallen, in a great measure into the hands of the Baptists, as in Baltimore it is conducted by the Methodists" (Slavery and the Domestic Slave Trade in the United States, p. 162).

<sup>76</sup> Cf. The Liberator, July 4, 1845.

<sup>77</sup> MS. Petitions, Floyd County, 1836, A 6081.

ninety-one free negroes of Richmond that the document is worth reproducing in full:—

The petition of a number of persons of colour residing in the City of Richmond, respectfully represents: that from the rapid increase of population in the City, the number of free persons of colour and slaves has become very considerable and although few of them can boast any knowledge of letters, yet that they are always desirous of receiving such instruction from public and divine worship as may be given by sensible and prudent Teachers of religion.

It has been the misfortune of your petitioners to be excluded from the churches, meeting-houses and other places of public devotion which are used by white persons in consequence of no appropriate places being assigned for them, except in a few Houses, and they have been compelled to look to private Houses, where they are much crowded and where a portion of their Brothers are unable to hear or to partake of the worship which is going on. Your Petitioners consisting of free persons and slaves, have been for some time associated with the Baptist church. A list of their members consisting of about 700 persons has been submitted for his inspection to the Head of Police of this City and no objection has been by him made to their moral characters.

Your Petitioners for these reasons humbly pray that your honourable body will pass a law authorizing them to cause to be erected within this city a house of public worship which may be called the Baptist African Church. To such restrictions and restraints as are consistent with the laws now existing or which may hereafter be passed for the proper restraint of persons of colour and for the preservation of the peace and good order of society . . . your petitioners are prepared most cheerfully to submit, and although it would be pleasing to them to have a voice in the choice of their Teachers yet would they be quite satisfied that any choice made by them should be approved or rejected by the Mayor of this city, they ask not for the privilege of continuing in office any preacher who shall in any manner have rendered himself obnoxious to the Mayor, nor can they reasonably expect to hold night meetings or assemblages for Baptizing but with the consent of that officer. And your Petitioners as in duty bound will ever pray. . . ."

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"MS. Petitions, Henrico County, 1823, A 9335. Affixed to this petition were the following names of free colored persons of Richmond and the mayor's certificate, as follows:—

"I hereby certify that I have examined the list of signatures of free persons of colour hereunto attached and believe them to be respectable.

"I am of opinion that the prayers of their petition, if granted, may be productive of benefit to themselves as well as to the white population of Richmond and most sincerely wish them success.

JOHN ADAMS,

Mayor of the City of Richmond.

Free persons of colour of the City of Richmond of the Baptist denomination:

Richard Dye,  
Teanah Dye,

Hembrey Tompkins,  
Mary Tompkins,

Although it appears that the bill introduced in the House of Delegates granting the privileges asked for in this petition was lost, the negroes were enabled by some means to erect church houses for their use. There were three African Baptist churches and two African Methodist churches in Richmond in the decade before the Civil War.<sup>79</sup>

When the agitation for the abolition of slavery became acute and antislavery tracts and pamphlets were in wide circulation in the State, the friends of the institution of slavery became apprehensive of the evil which might result from the reading of such literature by free negroes, and in consequence brought about legislation to prevent free negroes from acquiring a knowledge of books.<sup>79a</sup> The proximate cause of legislative action was probably the discovery in 1830 by the mayor of Richmond of a copy of Walker's Appeal to the Colored Citizens of the World in the house of a free negro after his death.<sup>80</sup> By an act of April 7, 1831, "all

William Caswell,  
Robert Dandridge,  
Martha Dandridge,  
Thomas Mondowney,  
Catherine Mondowney,  
Exland Henderson,  
P. Wm. Reynolds,  
Sarah Reynolds,  
Isaac Vines,  
Nicholaus Scott,  
Betsy Scott,  
Mary Barges,  
David Bowles,  
Susan Bowles,  
Joseph Bell,  
John Peters,  
Agness Peters,  
Douglass Tinsley,  
John Green,  
Isham Ellis,

Nancy Ellis,  
Phillip Robenson,  
Richard Vaughan,  
Agness Vaughan,  
John Harper,  
Caesar Hawkins,  
Fanny Hawkins,  
James Greenhow,  
Alice Greenhow,  
Minis Hill,  
Cas Hill,  
Isaac Reynals,  
Billy Swann,  
Aley Swann,  
Edwd. Lightford,  
Edward Casey,  
Nanney Casey,  
Wilson Morris,  
Fanny Drummond,  
Pleasants Price.

and 47 others, with certificates and endorsements by Joseph Price, master of police, and seven other prominent white men of the city.

<sup>79</sup> Richmond Directory, 1852, p. 165; 1856 passim.

<sup>79a</sup> In his message to the legislature Governor Floyd asserted that the free negroes had helped to stir up revolt, and had "opened more enlarged views," and that inasmuch as they were allowed to go at liberty they could "distribute incendiary pamphlets and papers" (House Journal, 1831-1832, p. 10).

<sup>80</sup> Richmond Enquirer, January 28, 1830. Cf. J. B. McMaster, History of the People of the United States, vol. vi, p. 70.



meetings of free negroes or mulattoes at any school-house or other place for teaching them reading or writing, either in the day or night, under whatever pretext," were declared to be unlawful assemblies. Any justice either of his own knowledge or on information of others could issue his warrant to an officer authorizing him to enter the house and arrest or disperse the offending free negroes and to inflict upon them, at the discretion of a justice of the peace, corporal punishment not exceeding thirty-nine lashes. If a white person attempted to teach free negroes for pay, he was liable to a fine of fifty dollars and imprisonment.<sup>81</sup> After "Brother" Nat Turner's insurrection the ban was put upon negro preachers and teachers by an act declaring it unlawful for negroes, whether ordained or licensed or otherwise, to preach, exhort, or conduct any meeting for religious or other purposes.<sup>82</sup> In the revision of this law in 1842 it was declared that "every assemblage of negroes for the purpose of religious worship, when such worship is conducted by a negro, and every assemblage of negroes for the purpose of instruction in reading and writing, or in the night time for any purpose, shall be deemed an unlawful assembly."<sup>83</sup> Some free colored persons who possessed sufficient means began sending their children to the North to be educated; but in 1838 all such efforts were forestalled by an act declaring that any free person of color who should go beyond the State for education should be considered to have emigrated.<sup>84</sup> This was equivalent to a declaration that no free negro going out of the State for education should return. It was apparently in anticipation of this act forbidding Virginia free negroes to seek education in the North that sixteen free negroes of Fredericksburg, all of whom possessed considerable property, petitioned the Virginia leg-

<sup>81</sup> Acts, 1830-1831, p. 107; Supplement to Revised Code, 244-245.

<sup>82</sup> Acts, 1831-1832, p. 20; Supplement to Revised Code, 246-247. In 1834 ten free negroes of Richmond complained in a petition to the legislature that the consequence of this law was that many colored human beings were interred like brutes, their friends and relatives being unable to procure the usual ceremony in the burial of the dead (MS. Petitions, Henrico County, 1834, A 9483).

<sup>83</sup> Acts, 1840-1842, p. 21; 1847-1848, p. 120; Code (1860), 810-811.

<sup>84</sup> Acts, 1838, p. 76; Hurd, vol. ii, p. 10; Acts, 1847-1848, p. 119.



islature in 1838 for the privilege of establishing a school for free colored children in their city.<sup>85</sup> They complained of the inconvenience of sending their children to the North for education, and very tactfully added that they preferred not to send them where "they imbibe bad doctrines." The legislature refused them the right to establish the school,<sup>86</sup> and attended in its own way to the danger of imbibing bad doctrines by withdrawing from free negroes even the privilege of educating their children beyond the limits of the State. From 1838 to the close of the Civil War the only educational advantage that could lawfully be given to the free negroes was strictly private instruction. Rarely and with difficulty did some free colored families procure white persons to teach their children privately.<sup>87</sup>

In view of the difficulties to be met by free colored persons in the pursuit of learning, the discovery of a high percentage of illiteracy in that class of the population occasions no surprise. "Calx," writing in the later fifties, observed that "the free negroes, as a class, are ignorant."<sup>88</sup> There were, however, in 1850 a little above one free negro in six who could read and write. In the white population of the State a little more than eleven out of twelve were literate. In other words, about eighty per cent of the free colored population throughout the State was illiterate, as compared with eight per cent in the white population.<sup>89</sup> Quite generally throughout the entire period of two and a half centuries under review free negroes and mulattoes could merely make their marks in affixing their signatures to records of legal or business transactions.

In the fifty years before 1861 it was the practice of persons

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<sup>85</sup> MS. Petitions, Spottsylvania County, 1838.

<sup>86</sup> House Journal, 1837-1838, p. 248.

<sup>87</sup> Upon the authority of elderly men who are able to recall events of the last two decades before the Civil War, it may safely be stated that white persons sometimes taught free negro children in the homes of the negroes.

<sup>88</sup> "Calx," p. 4.

<sup>89</sup> Census of 1850, Population, vol. vii, p. 271.

opposed to the residence of free negroes in Virginia, particularly the promoters of societies for colonizing them in Africa, to condemn them almost indiscriminately as being not only morally depraved but economically worthless.<sup>90</sup> Fortunately there are other and less biased witnesses from whose evidence may be formed an estimate of the value and merits of the free colored class as an economic factor. It should be remembered that all efforts to remove the free negroes from Virginia failed utterly, and with truth it may be said that one of the chief obstacles in the way of those efforts was, then as at the present time, the demand for their labor. Between 1790 and 1860 the free negro class, numbering from twelve thousand to sixty thousand, was far from being a negligible factor in the labor supply of that half of the State in which they resided and to which their labor was accessible. Any conception that the free negro was crushed in the scramble for employment between the slave and the white laborer may at the outset be banished from mind. Let us see in a general way what were the conditions affecting the economic opportunities of the free negro from 1782 to the Civil War as regards the character of employment and employers.

The agricultural and especially the plantation work was done principally by slaves. But there was a large element in the white population, even in the eastern part of the State, which was non-slaveholding and not devoted to agriculture, except in an avocational and subsidiary manner. To this element belonged the larger part of town and city populations. Whatever employment was furnished to laborers by the non-slaveholding class of whites was open to competition by the free negro; and his competitors were white laborers and persons who had slaves to hire.<sup>91</sup> But many non-slave-

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<sup>90</sup> Compare what William Jay had to say in 1835 on the character and tendency of the American colonization societies, in a little book entitled *Slavery in America*, chapters i-v. He quotes C. L. Moseby's address before the Virginia Colonization Society, as follows: "This class of persons is a curse and a contagion wherever they reside" (p. 12; *African Repository*, vol. iii, p. 203).

<sup>91</sup> Local newspaper advertisement, City Point, 1800: "Encourage-

holding employers preferred free labor to slave labor because of conscientious scruples as to the moral justification of slavery,<sup>92</sup> and hired slaves were not well suited to do small irregular jobs. Hence there was a certain amount of employment for which the free negro had no competitor, except the white laborer, or white hireling, as he was sometimes called.

Within this field of demand for free laborers, where the only handicap upon the free negro in his contest with the free white workman was race prejudice, he was easily the winner. In the first place, white men of pride, disdaining to enter into competition with the free negro for employment open to them, emigrated to the West. "While he [the free negro] remained here," asserted citizens of Henrico County in 1825, "no white laborer will seek employment near him. Hence, it is that in some of the richest counties east of the Blue Ridge the white population is stationary and in many others it is retrograde."<sup>93</sup> Governor Smith in his message of 1847 to the legislature said, "I venture the opinion that a larger emigration of our white laborers is produced by our free negroes than by the institution of slavery."<sup>94</sup>

Such white laborers as remained to seek employment in the State fared badly where the free negroes were at all numerous. There were at least two important reasons for the free negro's supremacy over the white laborer: First, his standard of living and mode of living permitted him to accept smaller wages than the whites could accept and live. Governor Smith protested in 1848 that in the kind of work

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ment offered to free negroes or to persons having negroes to hire.—William Heth." The work to be done was ditching and draining. (Taken from a fragment of a newspaper accompanying a legislative petition, in Virginia State Library.)

<sup>92</sup> MS. Petitions, Loudoun Co., 1843, B 1900; F. L. Olmstead, *A Journey in the Seaboard Slave States*, p. 94; see statement of Randolph in the National Federal Convention, 1787, in *Madison Papers*, vol. iii, p. 1396.

<sup>93</sup> MS. Petitions, Henrico County, 1825, A 9358, A 9359.

<sup>94</sup> House Journal, 1847-1848, p. 20. Governor Smith reaffirmed this belief in his message of 1848 (*ibid.*, 1848-1849, p. 22).

required in cities and in odd jobs the free negroes "wholly supersede by the smallness and nature of their compensation the employment of white men."<sup>96</sup> Secondly, the free negro, being naturally of an obedient, tractable disposition and respectful of personal authority, and being hedged about by numerous legal incapacities and perils, was more easily commanded and directed, and was therefore a more desirable servant. Again, we have Governor Smith to testify, not in praise, but in blame, of the free negroes that "they perform a thousand little menial services to the exclusion of the white man, preferred by their employers because of the authority and control which they can exercise and frequently because of the ease and facility with which they can remunerate such services."<sup>98</sup>

The extent of the white employer's power to command a free negro workman or servant was even greater than that of a master over a slave; for by nature the free negro was quite as docile and as amenable to supervision as the slave, and unlike the slave he could be driven from the job and thus deprived of his means of support. Hence, as a matter of practice, the free negro was not infrequently a better "slave" than his kinsman in bondage. Between 1806 and 1860 large numbers of free negroes, when found beyond the limits of the counties or towns where they were known to have legal residence rights, were hired out by law as vagrants. Upon an occasion of a number of arrests, or when such prisoners arrested at various times had accumulated, the sheriff held a public auction, and cried off to the highest bidder the services of these freemen for a definite term of months or years, their labor selling from a few cents up to twenty-five cents per day.<sup>97</sup> Certainly with this system of hiring out free negroes under the vagrancy laws nothing but "poor white trash" could compete. The feelings of the white

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<sup>96</sup> Message, in House Journal, 1848-1849, p. 22.

<sup>97</sup> Message, in House Journal, 1847-1848, p. 20.

<sup>98</sup> Hiring out free negroes who were willing to be engaged by enterprising white agents became such a prosperous business that in 1852 a license tax of twenty-five dollars was exacted of such agents (Acts, 1852-1853, p. 15; 1855-1856, p. 45).

laborer in view of the conditions were correctly voiced by a white citizen writing in the *Richmond Whig*, December 11, 1845: "Those whose hearts are now sickened when they look into the carpenters' shops, the blacksmiths' shops and the shops of all the different trades in Richmond and see them crowded with negro apprentices and negro workmen, are ready to quit in disgust." Laws imposing direct restriction upon the economic activities and competition of the free negro were repeatedly asked for, but were refused by the legislature.<sup>98</sup>

Further light may be thrown upon the character and scope of the economic need served by the free negro by summarizing from many concrete cases the occupations in which he prospered. From the list may be eliminated lawyers, doctors, and, after 1832, teachers and preachers. Free negroes were forbidden by law to act in an official capacity, to administer medicine, and to teach or preach to persons assembled.<sup>99</sup> By reason of a prejudicial interpretation of the laws, if not in open violation of them, free negroes were not allowed to pursue unmolested the business of an innkeeper or proprietor.<sup>100</sup> A small part of the free colored class were landowners and farmers, having come into possession of land usually by bequest from their former owner.

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<sup>98</sup> House Journal, 1830-1831. Citizens of Culpeper County petitioned the legislature in 1831 to pass a law "for encouraging white mechanics by forbidding any slave free negro or mulatto to be bound apprentice to learn any trade or art" (House Journal, 1831-1832, pp. 2, 84). Certain limitations were placed by law upon the economic freedom of the free negro; but they were ostensibly for police purposes, and only incidentally affected his freedom in getting employment.

<sup>99</sup> See above, pp. 116, 144.

<sup>100</sup> In 1844 Jacob Sampson, a free mulatto, was ordered to show why his license of the court of Goochland County for keeping an inn or ordinary should not be revoked, and with no charges against him his license was revoked without any portion of the tax being refunded to him. By way of appeal to the legislature, he procured testimonials from a number of white citizens showing that he was honest, sober, and of good character; that in an orderly house which he had kept for fifteen years on the "three chopped" road he had entertained persons generally, and stock drivers especially, in a satisfactory manner. But his appeals were rejected by the legislature (MS. Petitions, Goochland County, 1844, A 7113; House Journal, 1844-1845, p. 37).

But the free negro was in general a toiler. Tucker observed that "the occupations of persons of this class are nearly the same as those of slaves."<sup>101</sup> Among those petitioning the legislature between 1776 and 1860 were the following, enumerated by trades and occupations: barbers, coopers, carpenters, mechanics, cabinet-makers, wheelwrights, chair-makers, bricklayers, plasterers, painters, tanners, shoemakers, blacksmiths, millers, sawyers, wood-dealers, draymen, hucksters, gardeners, confectioners, bakers, fishermen, fishmongers, oysterers, commanders of boats, lead miners, day laborers at all work, body servants and attendants, household servants, and washerwomen. There were known also to be a few merchants or dealers,<sup>102</sup> a few musicians,<sup>103</sup> and a few undertakers.<sup>104</sup>

A glance at this list will reveal the reason why free negroes flocked to the cities and towns. The employment in urban districts was in the nature of job work and service in unskilled trades to which the free negroes were adaptable. "Bad as they are," admitted an unfriendly critic in 1859, "the free negroes [in cities and towns] serve best in many menial and low stations."<sup>105</sup> Furthermore, as between occupations on the water and on the land, the free negro showed an inclination to choose the former. Tucker thought that one reason why the number of adult free colored females

<sup>101</sup> G. Tucker, *Progress of the United States in Population and Wealth in Fifty Years*, p. 139. In the census enumeration made in Virginia in 1782 some free negroes appear as appurtenances of the estates of white persons (*Heads of Families, First Census of United States, 1790, Virginia*, pp. 112-118).

<sup>102</sup> Law and sentiment were not favorable toward free negro dealers, especially hawkers and pedlars (2 Revised Code, 43). See *Richmond Daily Dispatch*, February 18, 1858, on the whipping of a free negro poultry dealer for stealing.

<sup>103</sup> At one time before the Civil War the colored band of the Richmond Blues was composed of free negroes.

<sup>104</sup> A free negro undertaker of Charlestown, West Virginia, makes the assertion that before the Civil War he buried the dead of the better classes of whites.

<sup>105</sup> "Calx," p. 15. See petition from Norfolk to the legislature, which, while pleading the cause of a free negro who was about to be forced to quit the city, pleaded also in behalf of "female families" of the city whom the free negro had been supplying with fuel (MS. Petitions, Norfolk County, 1834, B 4566).

exceeded the number of adult males of this class, while the reverse was true of other classes of the population, was that the male free negroes sought a seafaring life.<sup>106</sup> Bagby hints that the negro's preference for the Baptist Church may possibly find some explanation in his love for the water.<sup>107</sup> Fishing, oyster-dredging, and working on ships or boats as servants, cooks, stewards, stevedores, or navigators were all enticing employments for the free negro. Many of the best patronized boats on the rivers and bays were owned by free persons of color.

Probably the most prosperous and useful class of free negroes were the barbers. Many of the towns and cities, for example Lynchburg and Richmond, were at times almost wholly dependent upon free colored barbers.<sup>108</sup> Reuben West, a Richmond free negro following the trade of a barber, acquired a fortune of several thousand dollars.<sup>109</sup> In his shop on Main Street he ran from one to four chairs, and had as apprentice a free mulatto, William Mundin, who learned, and for a number of years followed, the trade as an apprentice to this free black man. If an assertion may be based wholly upon the declaration of a freeborn and very respectable negro yet living<sup>110</sup> who knew Reuben West, the latter owned for a few years two slaves whom he employed at his trade in his shop.

In some trades there were free negro entrepreneurs, who used and directed the labor of hired free negroes and slaves. A. E. Andrews, writing from Fredericksburg in 1835, asserted that "some of the best mechanics of the city are coloured men, and among them are several master workmen,

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<sup>106</sup> G. Tucker, *Progress of the United States*, p. 60.

<sup>107</sup> P. 278.

<sup>108</sup> A distinguished gentleman of Richmond, who in 1912 was eighty-four years of age, asserts that in all his life he never had a barber who was not colored to cut his hair or shave him. This was told the author to illustrate the extent to which the free negro was relied upon in the barber's trade.

<sup>109</sup> Tax-books, 1856, 1857, 1859. City Hall, Richmond.

<sup>110</sup> James H. Hill, 227 V Street, N. W., Washington, D. C., instructor in wood-work in the public schools, owns property in Richmond which belonged to the Hill family of free negroes long before the Civil War.



who employ a considerable number of coloured laborers."<sup>111</sup> It was no uncommon practice for free negroes to hire slaves to labor for them. The legislature considered repeatedly the expediency of denying to free negroes the right to hire slaves,<sup>112</sup> the ground of objection probably being the tendency of such employment to cause the slave, commanded by one not socially his superior, to despise his slavery, or the opportunity in such employ to acquire a knowledge of antislavery doctrines and propaganda.

How largely the failure of all attempts to remove the free negro from the State was due to a fairer appreciation of his economic worth when the value of an individual was to be considered than when the class as a whole was under review is shown by the protests forthcoming from the white inhabitants wherever and whenever an effort was made to enforce the law requiring negroes set free after 1806 to quit the State.<sup>113</sup> The protests are hardly less significant because they attempt to have only individuals excepted from the operation of the law than if they aimed at saving the entire class. In 1810 sixty persons prayed the legislature to allow a free negro wheelwright, "who will benefit the whole country," to remain in the State and the county;<sup>114</sup> and in the same year citizens of Petersburg declared to the Assembly that the town could not spare without loss one Uriah Tyner.<sup>115</sup> In 1812 a large number of citizens of Berkeley and Frederick counties told the legislature that "there is not a human being in this part of the country where they [Jerry and Susanna, free colored] reside who is

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<sup>111</sup> P. 162.

<sup>112</sup> The matter was before the legislature of 1841-1842 (House Journal, p. 16); a bill was introduced to prevent the practice in 1843 (ibid., 1842-1843, p. 182); the expediency of similar legislation was considered in 1844 (ibid., 1844-1845, p. 66), but the committee asked to be discharged.

<sup>113</sup> "The harsh measures often proposed in the legislature by those who feel the evil of their increasing numbers, have not been carried into laws" because of "the examples of intelligence, honesty and worth among them" (Message of Governor Smith, in House Journal, 1850-1851, p. 30).

<sup>114</sup> MS. Petitions, Henrico County, 1810, A 9180.

<sup>115</sup> MS. Petitions, Dinwiddie County, 1810, A 4946.



opposed to their remaining in Virginia."<sup>116</sup> The plea of the inhabitants of Lynchburg for Pleasant Rowan, a free colored carpenter and mechanic, was that "his loss would be felt in the community;"<sup>116a</sup> for Frederick Williams that he was a much needed barber;<sup>116b</sup> and for Ned Adams, that he was an almost indispensable cooper.<sup>117</sup> The people of Henrico County, petitioning for John Hopes, a free negro, said that he was a cooper "who would be useful in any community."<sup>118</sup> The same thing was said of Daniel Warner, a free negro barber of Warrenton, by one hundred and twenty white petitioners.<sup>119</sup> Ninety-five citizens of Accomac County declared to the legislature in 1838 that the services of John, a free negro sawyer, "are much required in his neighborhood."<sup>120</sup> Henry Parker of Loudoun County was considered by his white neighbors as "a good and useful man," desirable in the community as a day laborer.<sup>121</sup> No better example of the economic value placed upon the free negro could be found than the following petition from thirty-eight citizens of Essex County: "We would be glad if he [Ben, a free negro] could be permitted to remain with us and have his freedom as he is a well disposed person and a very useful man in many respects, he is a good carpenter, a good cooper, a coarse shoemaker, a good hand at almost everything that is useful to us farmers."<sup>122</sup>

In behalf of Harriet Cook, free colored, nearly one hundred white persons, among whom were seven justices of the peace, five ex-justices, sixteen merchants, six lawyers, and one postmaster, made to the legislature this petition: "It

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<sup>116</sup> MS. Petitions, Berkeley County, 1812, A 1980. Cf. a petition in behalf of Thomas Richard, of Lee County, who, it was asserted, could have got every man who knew him to consent to his remaining (MS. Petitions, Lee County, 1820, B 1315).

<sup>116a</sup> MS. Petitions, Campbell County, 1826, A 3482.

<sup>116b</sup> Ibid., 1834, A 3546, one hundred and seventy-five white petitioners.

<sup>117</sup> Ibid., 1834, A 3544, one hundred and sixty names.

<sup>118</sup> MS. Petitions, Henrico County, 1836, A 9531.

<sup>119</sup> MS. Petitions, Fauquier County, 1836, A 5848.

<sup>120</sup> MS. Petitions, Accomac County, 1838, A 88.

<sup>121</sup> MS. Petitions, Loudoun County, 1848, B 1961; 1849, B 1971.

<sup>122</sup> MS. Petitions, Essex County, 1842, A 5413.

would be a serious inconvenience to a number of the citizens of Leesburg to be deprived of her services as a washerwoman and in other capacities in which, in consequence of her gentility, trust-worthiness, and skill she is exceedingly useful."<sup>123</sup> In a similar manner Fortune Thomas, free colored, had rendered her services indispensable to the town of Halifax by baking cakes and tarts and making candies. "In fact," say the petitioners in her behalf, "she has been earnestly assured by the ladies that they can in no measure dispense with her assistance and that no party or wedding can well be given without great inconvenience should her shop be broken up and discontinued."<sup>124</sup> But rarely were protests uttered against favorable legislation in aid of a free negro who sought permission to remain in a community.<sup>125</sup>

After many years of futile effort to put into operation laws for the purpose of removing the free negro from the State it gradually dawned upon some white persons that the inhumanity of such laws was not the only great obstacle to their enforcement, but that the unwillingness of his neighbors to part with his services was the freedman's constant shield and protection. In 1838 certain fishermen in Westmoreland and Prince William counties complained of the scarcity of hands that could be hired in those counties because of the emigration of white and slave laborers, and sought from the legislature the privilege of using free negroes and mulattoes from the District of Columbia and Maryland,<sup>126</sup> contrary to the laws forbidding the migration of free negroes into the State.<sup>127</sup> In 1852 citizens of Accomac County frankly admitted that they wished the free negroes to remain among them, and prayed "the Honorable Assembly to privilege them to remain and pass a law binding all male negroes under 45 years who are not mechanics or sailors

<sup>123</sup> MS. Petitions, Loudoun County, 1850, B 1988.

<sup>124</sup> MS. Petitions, Halifax County, 1850, A 7722.

<sup>125</sup> See MS. Petitions, Accomac County, 1850, A 403a.

<sup>126</sup> MS. Petitions, Westmoreland County, 1838; Prince William County, 1839.

<sup>127</sup> The petitions were rejected (House Journal, 1839, pp. 84, 180, 246, 249).

or who are not able to carry on a farm, to hire themselves out by the year."<sup>128</sup> With reference to female free negroes a similar plan for utilizing their services was suggested. In the same year certain citizens of Culpeper County expressed to the legislature their desire that a law be passed to make binding any contract by which a free negro obligated himself to a permanent or lifelong servitude.<sup>129</sup> Governor Henry A. Wise, in a message to the General Assembly in 1857, asserted that one objection to a wholesale removal of the free negroes has been and is "that their labor is needed in many parts of the state where they are most numerous and that to get clear of them in any way is considerably to reduce *pro tanto* our population."<sup>130</sup>

In the foregoing paragraphs setting forth the position of the free negro population with reference to industry the aim has not been to convey an impression that opportunities to find useful, remunerative employment were abundant for all persons of this class. While it is true that of free laborers of all kinds the free negro was best fitted to survive under the adverse conditions confronting them, and that he appropriated for himself the better share of employment open to free laborers, the fact remains that a proportionately large class of free negroes were without any settled employment. Aside from every consideration of the character or natural propensities of the free negroes, that a portion of this population should have become vagabonds was the inevitable result of legislation made applicable to the free negro only. Two laws deserve particular mention in this connection. By an elaborate act passed in 1801 free negroes and mulattoes were forbidden to go beyond the county or town in which they were registered in order to seek employment or for any other purpose. A violator was made liable to arrest as a vagrant.<sup>131</sup> It is unimportant in this connection that the law was not consistently or generally enforced;

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<sup>128</sup> MS. Petitions, Accomac County, 1852, A 137.

<sup>129</sup> MS. Petitions, Culpeper County, 1852, A 4630.

<sup>130</sup> House Documents, no. 1, 1857, p. 151.

<sup>131</sup> Hening, vol. xv, p. 301; 1 Revised Code, 441.

the terms of the act placed a penalty upon white persons employing a free colored person not known to be a resident of the county or town in which the employer lived, thus narrowly limiting the scope of industrial activity of every free negro to his home town or county unless he ventured abroad to face conditions of employment doubly hazardous.

Five years later an act made unlawful the permanent residence in Virginia of any slave set free after May 1, 1806. For a number of years there was almost no effort made to punish violators of this law; consequently there accumulated a considerable number of free colored persons who were not by law entitled to reside in the State. By and by spasmodic efforts began to be made to give the act life. The efforts were not such as to prevent the increase of this expatriated class by means of manumission, but were sufficient to incite many of them to leave a community in which they were threatened or molested, and to seek safety and a means of subsistence elsewhere in the State. Some who were forced to move by the operation of this law were kept from settling by the above-mentioned prohibitions upon white employers to furnish them work. By 1860 probably from one fourth to one third of the free colored population in Virginia were unlawful residents under the provisions of the act of 1806. How little wonder it is that a colored population, facing the adverse industrial conditions which produced the "poor whites," and contending furthermore with every obstruction to economic freedom that laws could provide short of slavery, furnished many recruits for a class of negroes that were idle, vagrant, and parasitical in their method of obtaining a living.

In passing now to a discussion of the moral character of the free negro, we must avoid the error of his unfriendly contemporary critics who judged him solely by that portion of his class which was wandering through or living in the State without employment. If we have in mind only this idle set of vagabond free negroes, it would indeed be difficult

to exaggerate the moral degradation into which they fell. It is well worth while to take notice of some of the many adverse criticisms of the Virginia free negro by persons and societies unfriendly to him, because such characterizations may be justly applied to the worst element of the free colored population.

A petition of the Virginia Colonization Society for legislation in aid of efforts to remove the free negroes declared in 1833 that "the free negro is degraded, vicious and criminal."<sup>132</sup> In 1846 Governor Smith asserted that "our criminal statistics . . . demonstrate the moral degradation of the free negro, the hopelessness of his reform, the mischievous influence of his associations."<sup>133</sup> Again, in 1847 Governor Smith characterized the free negro class as "a race of idlers, thriftless and unproductive; they labor only from necessity, are content to put up with only a meagre supply of wants, prowl at dead of night and filch the labor of others."<sup>134</sup> Olmstead found a Virginia slave-owner who contended with him that the free negroes were "a miserable set of vagabonds, drunken, vicious, worse than those who are retained in slavery."<sup>135</sup> C. L. Moseby, in a speech before the Virginia Colonization Society, characterized the free colored class as "a large mass of human beings who hang as a vile excrescence upon society."<sup>136</sup> General Mercer, vice-president of the society, described the class as "a horde of miserable people—the objects of universal suspicion—subsisting by plunder."<sup>137</sup>

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<sup>132</sup> MS. Petitions, Henrico County, 1833, A 9456.

<sup>133</sup> House Journal, 1846-1847, p. 9.

<sup>134</sup> Ibid., 1847-1848, p. 20. But Governor Smith's generalizations were not expressed in words which conceal his prejudiced point of view. Having declared that the free negro was "a moral leper," he added: "That he will prove the ready instrument of those to be found in certain sections of our Union, who would kindle into flame our social edifice, cannot be doubted," thus revealing a strong motive for finding fault with the free negro character (ibid., 1846-1847, p. 9.)

<sup>135</sup> P. 44.

<sup>136</sup> Address before the Virginia Colonization Society, quoted from Jay, *Slavery in America*, p. 12; *African Repository*, vol. iii, p. 203.

<sup>137</sup> *African Repository*, vol. ii, p. 189.

A few of the free negro's critics were more discriminating, and by carefully confining their criticisms to the lowest stratum of the free negro class they afford additional proof that persons or societies who indiscriminately condemned all free negroes were judging the whole in view of only its worst part. For an example of the more conservative opinion of the degradation of the free negroes we may note the petition of the county court of Loudoun County to the legislature in 1836: "It is a curious fact that this unfortunate and degraded population, unwilling to leave the state; and placing itself in a condition to elude the officers of justice by flying from neighborhood to neighborhood and from county to county, is restrained from making permanent settlements; and is thus actually legislated into poverty, vagrancy, and crime."<sup>138</sup>

In the debate of 1832 Thomas Marshall with truth and with a discernment not usual with those who attempted to solve the free negro problem declared that in proportion as they were idle they were mischievous.<sup>139</sup> Professor Thomas R. Dew saw the close relation which the crimes and moral degradation of free negroes bore to their poverty and want, and explained it thus: "Idleness generates want, want gives rise to temptation, and strong temptation makes the criminal."<sup>140</sup> The wisdom of these observations is abundantly verified when we turn to the record of free negroes who were able to find remunerative employment in a tolerant community. In the place of such descriptive words as "degraded," "idle," "vicious," "drunken," "dishonest," which filled the memorials of the colonizers, there appear such phrases as "a man of integrity and honesty,"<sup>141</sup> "honest and prosperous man,"<sup>142</sup> "gentility, trustworthiness and skill."<sup>143</sup> In 1810 some of the most prominent citizens of Accomac County certified to the legislature that Jingo, a free negro,

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<sup>138</sup> MS. Petitions, Loudoun County,, 1836, B 1849.

<sup>139</sup> Richmond Enquirer, February 14, 1832.

<sup>140</sup> P. 83.

<sup>141</sup> MS. Petitions, Campbell County, 1822, A 3460.

<sup>142</sup> Ibid., 1851, A 3684.

<sup>143</sup> MS. Petitions, Loudoun County, 1850, B 1988.

"hath uniformly supported an excellent character for sobriety, honesty and industry and that he hath a wife and five children. . . . His wife is a woman of good character. . . . The husband and wife have provided well for their children and bring them up in a moral way."<sup>144</sup> Even among the class of whites who were hostile to the continued existence of the free negroes in Virginia there was an occasional witness to the fact that "examples of intelligence, honesty and worth are not lacking among them,"<sup>145</sup> and that "there are many of better habits—and a few who are industrious, provident and even worthy and useful;"<sup>146</sup> and a traveller from a Northern State expressed the opinion that "the free blacks are more moral and respectable than many among the lowest class of whites."<sup>147</sup> In view of the various conflicting assertions we are led to give credit to the recollections of respectable free negroes still living, who insist on dividing the free negroes, on a moral and social basis, into two classes, the upper one of which was thoroughly respectable, law-abiding, and prosperous, while to the lower element properly belongs the reputation for being evil associates and corruptors of slaves, and parasites on the community in which they lived.<sup>148</sup> Persons of the former class were designated by the respectful name of "men of color;" individuals of the latter class were called "free niggers."<sup>149</sup>

The foregoing remarks on the moral character of the free

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<sup>144</sup> MS. Petitions, Accomac County, 1810, A 42.

<sup>145</sup> Governor Floyd's message, in House Journal, 1850-1851, p. 30.

<sup>146</sup> "Calx," p. 5. In his essay, written about 1859, Calx proposed a scheme for reducing the number of free negroes by making a lack of employment evidence of guilt sufficient to authorize sale into slavery as a punishment. He opposed any indiscriminate sale or removal of both good and bad.

<sup>147</sup> Andrews, p. 162.

<sup>148</sup> This is the testimony of William Munda, born 1839, now living (1911) in Richmond.

<sup>149</sup> Interview with Richard A. Tucker, 13 Suffolk Street, Norfolk, Virginia. Judge Crothers, of Portsmouth, recalled that when he was a boy going to school four miles from his home in Isle of Wight County he passed on the way five families of free negroes. "They were respectable, respected, and fairly well-to-do." As far as he knew, there was no desire on the part of the white persons of the community to be rid of them (interview, Portsmouth, January 4, 1911).

negro have been made touching his deportment in general. To be able to determine what measure of justification there was for a vast deal of legislation imposing special limitations and restrictions upon his conduct inquiry must be made specifically into the truth of a few of the oft-repeated charges and indictments upon which discriminatory legislation was based. The four charges which were made with most telling effect were: (1) that he was a thief and a receiver of stolen goods; (2) that he was criminally disposed in an unusual degree; (3) that he was insurrectionary; and (4) that he was lazy and improvident.

First, then, as to his propensity to steal. That the free negro class produced a rather disproportionate number of thieves should not be doubted, but that the free negroes were worse in this respect than the slaves, or that they were worse than so many white persons would have become if placed in their circumstances and forced to remain there, is by no means proved. Jefferson observed with truth that "a man's moral sense must be unusually strong if slavery does not make him a thief."<sup>180</sup> While many of the free negroes of the period between 1782 and 1865 received their training in slavery, the possession of such qualities as trustworthiness, honesty, and faithfulness to duty was a prerequisite to the attainment of freedom. A bad slave, like an unruly horse, was more likely to go on the market, and was less likely to have the commiseration of his master, than one of better qualities. The fact is that the free negroes, as far as they had employment, were less inclined to steal than were slaves; but in this regard the less fortunate free negroes were subject to greater temptation, if possible, than slaves, and the evidence is conclusive that they were surpassed by no other inhabitants of the Commonwealth in the number and variety of their depredations. Mr. Archer, addressing the Virginia Colonization Society, said: "The free blacks are destined by an insurmountable barrier—to the want of occupation, thence to the want of food—thence to the distresses

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<sup>180</sup> Writings of Jefferson, vol. v, p. 66 (1789).



which ensue that want—thence to the settled deprivation which grows out of those distresses and is nursed in their bosoms.”<sup>151</sup> “Since they are idle,” observed ninety citizens of Culpeper County, “they either steal or perish.”<sup>152</sup>

It should, however, be kept in mind in a comparison of the free negro with the slave in regard to all such misdemeanors as thievery that the free negro was severely brought to account and universally criticised for his offenses, whereas the slave was often shielded from prosecution and criticism by reason of the dignity and authority of his master. Slave-owners were sometimes reluctant to admit that their slaves were as bad as or worse than the slaves of their neighbors, and by way of self-defense and self-protection from criticism condoned the misdemeanors of their slaves or punished them in private. But there was no cloak for the “free nigger.” The old warning “Be sure your sin will find you out” had abundant sanction as applied to him.

The economic activities of the roguish free negroes and slaves were thoroughly complementary and harmonious. The free negro, unlike the slave, could market products, the presumption being that he lawfully possessed them. The slave possessed first-hand information as to the location of many articles of produce. Hence the problem of production was managed by the slave; the burden of transportation was borne by the free negro; and the method of distribution was determined by mutual agreement. As early as 1691 the free negro was charged with being a receiver and conveyer

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<sup>151</sup> Quoted from Dew, p. 83.

<sup>152</sup> MS. Petitions, Culpeper County, 1846, A 4611. County and hustings court records of the nineteenth century contain numerous examples of theft by free negroes. See, for example, case of Bob Green, a free negro, who in a single night stole seven hams of bacon (Orders of the Richmond Hustings Court, no. 11, 1814, p. 153). Newspaper notes of their larcenies were sometimes tinged with a sarcasm that is indicative of their frequent repetition, as for instance the following: “The Poultry Trade—A negro engaged in the poultry business was detected a few nights ago in the act of robbing a hen house on the premises of a citizen of Manchester. A magistrate ordered ‘39’ for his benefit the next day” (Richmond Daily Dispatch, February 18, 1858).

of stolen goods,<sup>153</sup> and upon this and other accusations was based the legal restriction upon manumission. Soon after the act removing these restrictions went into effect, in 1782, complaints were heard from different quarters that "free negroes are agents, factors, and carriers to the neighboring towns for slaves, of property by them stolen from their masters and others."<sup>154</sup>

In the neighborhood of almost every gristmill in certain parts of eastern Virginia there were located squads of free negroes who were suspected by their white neighbors of procuring a large part of their sustenance by concert with roguish slave millers. In 1831 a number of citizens of Charles City and New Kent counties, seeking from the legislature relief from such conditions, asserted that it was a custom almost universal with owners of mills in their counties and in fact in the whole lower part of the State to employ slaves to attend the mills, and that the millers "are a sort of communication between slaves and the free persons of color" in the neighborhood.<sup>155</sup> The legislature, however, took no action in relief of the persons aggrieved.<sup>156</sup>

A complaint of a similar kind was received by the legislature in 1836 from Loudoun County. According to the petitioners, free negroes who owned "trading carts" and operated them between Washington or Georgetown and the rural communities of Virginia near the District of Columbia line were in the habit of receiving stolen goods from free negroes and slaves.<sup>157</sup> Complaints were heard at the same time from other quarters of the State, and, although the legislature refused to grant the specified request of the Loudoun County petitioners,<sup>158</sup> a bill of general application was introduced which was designed to prevent free negroes from trading

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<sup>153</sup> Hening, vol. iii, p. 87.

<sup>154</sup> MS. Petitions, Hanover County, 1784, A 8124; Henrico County, 1784, A 8971.

<sup>155</sup> MS. Petitions, Charles City County, 1831, A 3962.

<sup>156</sup> House Journal, 1831-1832, pp. 56, 84.

<sup>157</sup> MS. Petitions, Loudoun County, 1836, B 1840.

<sup>158</sup> House Journal, 1835-1836, p. 262.

beyond the town in which they resided. The measure met with defeat.<sup>159</sup>

There was a manifest reluctance on the part of the legislature to interfere by law with the right of the free negroes to trade freely, and, although complaints were becoming ominous,<sup>160</sup> proposed legislation for prohibiting them from selling grain without a certificate or evidence that they were the lawful possessors of it was in 1840 declared inexpedient.<sup>161</sup> In some counties, however, the white citizens were determined not to take further denial from the legislature. In 1843 one hundred and twenty-seven citizens of Accomac County signed a petition for a law imposing a penalty upon all white persons who made purchases of grain from free negroes without requiring from them the certificate of two respectable housekeepers showing that the grain was lawfully possessed. "Country stores are in the habit," reads the petition, "of receiving grain from free negroes who are not the producers of a single bushel of grain of any kind. The grain they sell is either stolen by the negroes who sell it or more frequently received by them of slaves who steal it from their masters and others and by this means exerts a most pernicious influence upon our slaves."<sup>162</sup> In response to the appeal there was introduced in the House of Delegates a bill containing provisions similar to those asked for by the Accomac petition and applicable to the entire State. It was later narrowed in application to the counties of Accomac and Richmond and enacted into law.<sup>163</sup>

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<sup>159</sup> Ibid., p. 244.

<sup>160</sup> In 1836 the following petition was made to the legislature by citizens of Northumberland County: "This class of people, as is well known to your honorable body, is everything that is the very opposite of honesty and industry. . . . The law to prevent dealing with slaves is a dead letter . . . for the slave has nothing to do but to pass over the plundered property of his owner to the free negroes who can openly carry it to market and make sale of it as the production of his own labor."

Since 1785 it had been unlawful for free persons to trade with a slave without leave from the slave's master and to trade with slaves, free negroes, or mulattoes on Sunday (1 Revised Code, 426).

<sup>161</sup> House Journal, 1840-1841, p. 59.

<sup>162</sup> MS. Petitions, Accomac County, 1843, A 98.

<sup>163</sup> House Journal, 1842-1843, pp. 213, 269; Acts, 1842-1845.

The second charge or accusation, as above enumerated, which was repeatedly made against the free negro was that he was unusually criminal. Upon the assumption of the truth of this indictment were based the criminal laws of the second quarter of the nineteenth century applicable to the free negro. Before the beginning of the nineteenth century the free negro class was not so large as to attract special attention to its criminal record. Statistics relative to the inmates of the penitentiary made and published during the first quarter of the nineteenth century brought to the attention of the public the fact that the free negroes were committing from two to twelve times as many of the crimes of the State for which punishment was meted out as an equal number of average white persons. According to criminal statistics in 1804, the free negroes committed in proportion to the population twice as many crimes as the free whites. In 1808 in proportion to the population they committed twelve crimes punished in the penitentiary to one among the whites; in 1810, three to one; in 1812, eight to one; and in 1824, twelve to one. The conclusions drawn from these statistics created a very general belief that the free negro was fast becoming more criminal, and that existing criminal laws were wholly inadequate for a class so vicious as the free Africans. Consequently, in 1823 a law was passed which substituted for confinement in the penitentiary, transportation and sale as a method of punishing the crimes of free negroes. For four years this law was effective, during which time thirty-five free negroes were convicted, transported, and sold into slavery.<sup>164</sup> During this period, the number of free negro convicts in proportion to the whites was no less than it had been under the penitentiary system. It is to the credit of Governor William B. Giles that the law was repealed in 1828. He realized the absurdity of taking the number of free negro convicts and comparing it with the number of white convicts in judging the relative criminal capacities and tendencies of the free negroes and the whites.

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<sup>164</sup> House Documents, no. 15, 1848-1849; no. 4, 1853-1854.

The injustice to the negro of such a method consisted, first, in an erroneous assumption that the laws were administered as severely against white persons as against free negroes,<sup>108</sup> and, secondly, in a comparison of the record of the free negroes with the whole white population instead of with an equal number of whites similarly situated as to means of earning a living. So pertinent in this connection are the remarks of Governor Giles that they may be quoted at some length:—

I am far from yielding to the opinion expressed by the intelligent committee of the House of Delegates of Virginia and the enthusiastic memorialists of Powhatan respecting the degraded and demoralized condition of this *caste*—at least in degree and extent. It will be admitted that this *caste* of colored population attracted but little of the public sympathy and commiseration,—in fact, that the public feeling and sentiment are opposed to it. It is also admitted that the penal laws against it have been marked with peculiar severity;<sup>109</sup> so much so, as to form a characteristic exception to our whole penal code. When I first came into the office of Governor, such was the severity of the penal laws against this *caste*, that for all capital offences short of punishment by death and for many offences not capital, slavery, sale and transportation formed the wretched doom denounced by the laws against this unfavored, despised *caste* of colored population. . . . I have also reason to fear, that under the influence of general prejudices, the laws; in some instances, have been administered against this class more in rigour than in justice. Yet, notwithstanding all these deprecated circumstances, the proportion of convicts to the whole population has been small.

He points out the fact that only about one out of every thousand free negroes was a criminal, and concludes that

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<sup>108</sup> It was made a penitentiary offense for a free person "to advise any slave to abscond from his master or aid such slave to abscond by procuring for or delivering to him a pass, register or other writing or furnish him money, clothes, etc." (Acts, 1855–1856, p. 42).

In 1848 ten out of eighty-one free negroes in the penitentiary were there for aiding or abetting slaves to escape from their masters. This is only one example of the many more chances for a free negro to be sent to the penitentiary than for a white person (House Journal, 1847–1848, pp. 20, 22; MS. Petitions, Henrico County, 1844, A 9654). Two thirds of the offenses for which free negroes were arraigned before the hustings court of Richmond were defined by laws which did not apply to white persons,—such, for instance, as that which made it a criminal offense for a free negro to remain in a city or county without proper registration (Richmond Daily Dispatch, February 8, 1859).

<sup>109</sup> Compare Howison, vol. ii, pp. 458–459, for similar expressions. For example, he says: "They are subject to restraints and surveillance in points beyond number."

"these facts prove, first, that this class of population is by no means so vicious, degraded and demoralized as represented by their prejudiced friends and voluntary benefactors. And, second, that evils attributed to this class are vastly magnified and exaggerated."<sup>167</sup>

From 1828, the date of the repeal of the law fixing transportation and sale as a penalty in the case of free colored convicts, to 1861 the free colored class furnished from one tenth to one fifth of the inmates of the penitentiary. The apparent disproportion of the crimes of this class was often pointed out in argument for a general deportation or colonization.<sup>168</sup> Governors Smith, Floyd, Johnson, and Wise brought the fact repeatedly to the attention of the legislature.<sup>169</sup> Governor Smith, however, attributed much of the disparity to circumstances which, for the free negro, were unavoidable. "If there be," said he, "in his natural character the elements to make him a great and good man, it is hopeless to expect that they will ever be developed under our policy."<sup>170</sup> Governor Wise, in stating in 1857 some possible arguments in defense of the free negro, observed that "if many of them are corrupted and degenerated . . . it is owing not only to their own improvidence, but to evil communication with bad white men who associate and deal with them and abuse their weakness and who are not restrained by penal laws."<sup>171</sup>

It should be said that the penal record of the Virginia free negro was not worse than that of the negro in some northern free States,—for instance, Massachusetts. Between 1840 and 1850 the number of colored convicts to one white convict, in proportion to the population, was in Massachusetts,

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<sup>167</sup> P. 20.

<sup>168</sup> "An ominous disparity! which was constantly pressed upon the attention of the reflecting men of the state" (Howison, vol. ii, p. 458).

<sup>169</sup> Messages of the Governors, in House Journal, 1846-1847; 1847-1848, p. 20; 1850-1851, p. 30; 1853-1854, doc. no. 1, p. 14; House Documents, no. 1, 1857-1858, p. 151.

<sup>170</sup> House Journal, 1847-1848, p. 20.

<sup>171</sup> House Documents, no. 1, 1857, p. 151.

9.6; in Virginia, 7.2. For the first two years of the decade of the fifties it was in Massachusetts, 13; in Virginia, 6.3.<sup>172</sup>

If a comparison is made of the criminal record of the negroes of Virginia at the present time on the basis of the relative number of white and black convicts in the penitentiary, the disparity will appear as great today as at almost any time prior to the Civil War.<sup>173</sup> The conclusion seems irresistible that the criminal capacities and tendencies of the antebellum free negro were not so great as they were quite generally believed to be.

Thirdly, was the free negro insurrectionary and turbulent? No criticism of the free negro was more general and more undeserved than that he contrived, or was disposed to contrive, insurrections, and that he induced the slaves to rebel against their masters. He was referred to on the floor of the legislature in 1805 as a possible leader of a rebellion or an "active chieftain of a formidable conspiracy."<sup>174</sup>

The insurrection in Santo Domingo, headed by the free blacks of the island, for a long time furnished the starting-point of arguments advanced to show that free negroes might at any time head a slave rebellion. In 1823 Lafayette asked Madison whether it was considered that the increase in the proportion of free blacks to slaves tended to increase or diminish the dangers of insurrection. Madison's answer was, "Rather increases," and that in case of a slave insurrection the free blacks would be more likely to side with the slaves than with the whites. Madison certainly gave a correct expression of the general feeling or belief of the white population, but there is really little evidence to show that the impression was correct. There are no instances on record of insurrections in Virginia initiated by or carried out under the leadership of free negroes. Not a free negro was proved to have had any criminal relation to the Gabriel plot in 1800, and only two free negro men

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<sup>172</sup> House Documents, no. 14, 1853-1854, pp. 38, 54.

<sup>173</sup> Reports of Virginia Penitentiary, October, 1909, September 30, 1910.

<sup>174</sup> Richmond Enquirer, January 15, 1805.



whose wives were slaves were implicated in the Nat Turner insurrection; neither of the two seems to have been a leading spirit among the seventy or more slaves who participated in the affair.<sup>175</sup>

An insurrection always brought out expressions of fear of the free negro, first, because he was presumed to have kindred and sympathetic feelings for the slave and to share with him prejudices against the whites; and secondly, because he was known to have intimate relations with the slaves and an increased capacity for organization by reason of his freedom to go from place to place. Expressed opinions of the danger of free negro insurrections were very numerous for a while after the Southampton affair,<sup>176</sup> but occasionally some writer or speaker who thought twice before venturing a remedy for the ills of society pointed out the fact, which now seems plain enough, that the free negroes who had a legal right to remain and those who, despite the law, were tolerated in Virginia were too well satisfied to create insurrection.<sup>177</sup> Thomas Marshall observed with truth in the legislature of 1832, "There is no evidence of a disposition to join in revolt or disturb the public tranquility."<sup>178</sup> Professor Dew observed that the Virginia free negro had been taught to understand his place and to occupy it humbly.<sup>179</sup> The antebellum free negro did not demand social or political equality, but rather felt that any right that he possessed was so much for which he should be thankful. The slave set free because of meritorious conduct or faithfulness of service, far from being insurrectionary, was an example of politeness, humility, and respect for superiors and for authority such as is rarely if ever seen at the present

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<sup>175</sup> Richmond Enquirer, November 18, 1831; W. S. Drewry, *The Southampton Insurrection*, appendix.

<sup>176</sup> "We are not unmindful of the aid slaves would get from this source [the free negroes] in case of a servile insurrection" (Petition of 200 citizens of Northampton, in *MS. Petitions*, December, 1831, A 4884).

<sup>177</sup> See article contributed to the Richmond Enquirer, November 18, 1831.

<sup>178</sup> Richmond Enquirer, February 14, 1832.

<sup>179</sup> Pp. 85, 87.



among either the white or the black population.<sup>180</sup> The infusion of this, the best type of African in America, among the free negro class was sufficient in itself to influence the class toward submissiveness.

Thomas Marshall believed with not a few thoughtful men that the free negro constituted "no inconsiderable barrier to a future insurrection of slaves."<sup>181</sup> A similar opinion was expressed on the floor of the legislature in 1805.<sup>182</sup> In truth, there are numerous instances of the forestalling of insurrections and the preventing of plots of slaves through the agency of free negroes. Moses, a free negro of Goochland County, revealed a conspiracy of slaves in 1822.<sup>183</sup> In 1810 two hundred citizens of Petersburg declared to the legislature through a petition that a free negro, Emanuel, had saved the town from conflagration by reporting and aiding in the capture of incendiary, plotting slaves.<sup>184</sup> Lewis Bowlagh presented certificates to the legislature to show that he had given information to the whites in time to prevent bloodshed plotted by slaves.<sup>185</sup> A petition in behalf of Isaac, of Rockbridge County, was based on the ground that he had been a useful man in detecting and bringing negroes to account for their wrongdoing.<sup>186</sup> Daniel Brady's father, a man of good character, even surrendered up his own son to stand his trial and suffer punishment.<sup>187</sup> It was certainly not the disposition of the free negro, knowingly and with design, to increase the prejudices of the whites against him by creating insurrection. Far from being of "a turbulent and discontented" disposition, as those in favor of coloniza-

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<sup>180</sup> "They are peaceable, orderly in their deportment, humble to those whom the law has made their superiors and polite to those who are considered their equals." Said by fifty-nine white persons of Caroline County of nine free negroes—Joseph Tyree, his wife, and seven children (MS. Petitions, Caroline County, 1821, A 3804).

<sup>181</sup> Richmond Enquirer, February 14, 1832.

<sup>182</sup> Ibid., January 15, 1805.

<sup>183</sup> MS. Petitions, Goochland County, 1822, A 7085.

<sup>184</sup> MS. Petitions, Dinwiddie County, 1810, A 5196.

<sup>185</sup> MS. Petitions, Henrico County, 1824, A 9353.

<sup>186</sup> MS. Petitions, Rockbridge County, uncatalogued.

<sup>187</sup> Pardons issued by Governor Wise, in House Documents, no. 1, 1857-1858, p. clxx.

tion declared him to be, he longed to be left alone in the place of his birth, free from fears of molestation and annoyance, to enjoy perfect contentment. Without question the free negro population in Virginia was in general meek and submissive and not inclined to rebellion.<sup>188</sup>

Fourthly, the charge often made that the free negro was lazy and improvident must not be accepted without some qualification. It is reasonable to believe that the free negroes, like the slaves, were naturally lazy; but it is really remarkable what examples of thrift and economy this class produced. Within the space of four years Rose Hailstock purchased with her saved earnings her own freedom and, one by one, the freedom of her three children, paying altogether £125 sterling.<sup>189</sup> Samuel Jackson saved enough to purchase in 1815 the freedom of his wife and two children.<sup>190</sup> Arthur Lee, of Alleghany County, displayed a perseverance and an ability to economize that is not often surpassed by laboring men of any race or condition. For sixteen years he was the slave of a man named Brown, who lived in North Carolina, but he was permitted to remain in Virginia on the condition that he pay his owner one hundred dollars per annum. Having paid, at this rate, sixteen hundred dollars by 1835, he purchased his freedom, paying his owner five hundred dollars for his future liberty. Not satisfied, he immediately set to work to earn three hundred and fifty dollars with which to purchase his wife's freedom. This done, he procured the signatures of one hundred and seventy-six citizens of Alleghany County to his humble petition to the legislature for a law granting to him and his wife a legal right to reside in the Commonwealth, that he might continue to ply the honorable trade of a blacksmith.<sup>191</sup> As to the character for industry of Billy Williams, forty-seven

<sup>188</sup> Professor Dew admitted, or, we might say, contended that the Virginia free negro was more orderly and well behaved than the free negro of the Northern States. In the North, he said, the negro was taught arrogance and equality. In the South he was made to understand his place and to occupy it humbly (pp. 85, 87).

<sup>189</sup> Hening, vol. xiii, p. 618.

<sup>190</sup> MS. Petitions, Fauquier County, 1815, A 5760.

<sup>191</sup> MS. Petitions, Alleghany County, 1835, A 666.

citizens of Campbell County said: "We are his neighbors and are willing and indeed desirous that the legislature pass the law permitting him to remain in the state, as he is not only an honest, prosperous man, but in truth a most useful and accommodating man to his neighbors and all with whom he has anything to do. A farmer by occupation and owns 100 acres of land."<sup>192</sup> Examples could be multiplied indefinitely in contradiction of indiscriminating indictments, such, for instance, as that made by Governor Smith when he characterized the free colored population as a "race of idlers, thriftless and unproductive."<sup>193</sup> The exaggerated and often self-contradictory character of the statements of colonization zealots will best appear by a quotation from a widely circulated memorial<sup>194</sup> to the legislature:—

Their idleness is proverbial; they live, few know in what way and fewer where. . . . Whatever energy can be spared from annoying both classes [slave and white] is expended in multiplying their own numbers.

And yet this same individual, the pest of the land which gives him only birth, when transported to a seat where his industry may have excitement and object becomes the active, thriving, and happy citizen of Liberia.<sup>195</sup>

Rigorous and discriminatory as were the laws of Virginia enacted for the purpose of controlling that presumably law-

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<sup>192</sup> MS. Petitions, Campbell County, 1851, A 3684.

<sup>193</sup> House Journal, 1847-1848, p. 20.

<sup>194</sup> MS. Petitions, Henrico County, 1831, A 9431. See also memorial of the Auxiliary Colonization Society of Buckingham County, in MS. Petitions, Buckingham County, 1832, A 3080. A memorial of the Fairfax Colonization Society read: "Pursuing no course of regular business and negligent of everything like economy and husbandry they are a part of the community supported by the industry of others" (MS. Petitions, Fairfax County, 1832, A 5578).

<sup>195</sup> With this picture of what the Virginia colonizers professed to think the free negro would become in Liberia may be compared what citizens of Somerset County, Maryland, thought of the Virginia free negroes who had come into Maryland from Virginia after the law of 1806 made the residence of certain ones illegal in Virginia: "We reap not the rewards or fruits of our labor . . . all is snatched from us by that curse of God's Creation, the degraded free negro . . . he toils not neither does he spin, yet like Dives he fares sumptuously and is arrayed in purple and fine linen and well he may, for he appropriates to his own use the labors of the entire white population" (MS. Petitions to Maryland Legislature, in Maryland Historical Society, portfolio 7, no. 28).

less, disorderly and vicious member of society, the free negro, they fail in some respects to reveal the extent to which he was subjected to surveillance and discipline, while in other respects they represent a harsher treatment than he actually received. In the nineteenth century there existed a law for keeping watch over and controlling the conduct of free negroes not found among the statutes or supported by legal precedents. Its sanction was in community sentiment, and its name was lynch-law. The practice before the Civil War of policing the free negroes by self-appointed bailiffs was the historical antecedent of the Ku Klux Klan of reconstruction days, although there was not the same degree of organization and not so wide a gap between local sentiment and legal administration before as during that time.

Prostitution and vice among the free colored population were frequently dealt with by methods not approved by law. For example, in Amelia County in 1821 the inmates of houses of ill repute were visited and chastized by a party of disguised white men.<sup>100</sup> Although a fine was imposed upon at least one of the persons connected with this raid, the state of sentiment favorable to the method of procedure is seen in the effort made by half a hundred of the local residents to have the convicted man released from his fine. General Brodnax, speaking from the floor of the legislature in 1832, was not challenged upon the assertion that such methods of getting rid of undesirable free negroes were of common occurrence. "Who does not know," said he, "that when a free negro, by crime or otherwise, has rendered himself obnoxious to a neighborhood, how easy it is for a party to visit him one night, take him from his bed and family, and apply to him the gentle admonition of a severe flagellation, to induce him to go away. In a few nights the dose can be repeated, perhaps increased, until, in the language of the physicians, *quantum suff* has been administered . . .

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<sup>100</sup> MS. Petitions, Amelia County, 1821, A 781.

and the fellow becomes perfectly willing to go away."<sup>197</sup> So commonly was lynch-law of this character resorted to by the whites in prevailing upon free negroes to yield to their wishes that one argument strongly urged in 1832 in favor of a law authorizing the use of force in carrying out a colonization scheme was the necessity of shielding the negroes from the cruelty of private intimidation and compulsion.<sup>198</sup> William Miles Cuffee, a free negro born in 1839, now living at Hickory Ground, Virginia, tells how in 1859, upon a rumor of insurrection, whites assembled in bands to intimidate and frighten the free negroes in the community. According to his report, he remained hidden in the woods for about three days and nights while the raids were being conducted against persons of his class.

While local sentiment often permitted the authority of the law to be exceeded or ignored by individuals self-appointed to discipline and punish free negroes, it no less frequently permitted laws to remain unenforced. Speaking of the laws which forbade free negroes to move from one town or locality to another and to assemble in considerable numbers and of those which compelled them to submit to search of their houses and persons by patrols, a writer in the *Richmond Enquirer* declared that "these provisions and many other laws on this subject are so much at variance with the feelings of our citizens that in many parts of the state they are merely a dead letter. . . . So long as our humanity preponderates over our fears, so long will those laws be very partially and feebly executed."<sup>199</sup>

The same writer clearly discerns and explains the reason why legislation dealing with the free negroes outran execution: "As legislators, impressed with the jeopardy that threatens the public safety, men readily give their assent to

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<sup>197</sup> *Richmond Enquirer*, February 14, 1832. Compare Jay, *Slavery in America*, p. 45.

<sup>198</sup> Speech of Mr. Chandler, in the *Richmond Enquirer*, February 14, 1832. General Brodnax said that he understood that the consent of the emigrants in a cargo which had recently set sail for Africa was obtained by private compulsion.

<sup>199</sup> *Richmond Enquirer*, October 8, 1805.

any measure that seems calculated to protect it, but when they return to the bosom of their families and are surrounded by those among whom they were born and nursed and from whose labor they obtain the means of comfort and independence the sentiments of the legislator are frequently lost in the feelings of humanity and affection in the private man."

An illustration of this fact is seen in the operation of that law which directed emancipated slaves to leave the State within twelve months from the date of their emancipation. Henry Howe said in 1845 that "these laws, and every other having the appearance of rigor . . . are nearly dead letters upon our statute books, unless during times of excitement, or since the efforts of the abolitionists have reanimated them. I have, until lately, scarcely known an instance in which they have been enforced."<sup>200</sup> Petitions were continually being sent to the legislature by white persons complaining "that the law requiring the removal [of ex-slaves] is in its operation perfectly nugatory."<sup>201</sup>

In certain localities, however, and at certain times the law was rendered in some measure effective. The act was a penal statute, depending upon local officials for its execution; hence enforcement was not uniform as to times and places. The appearance of the successive census reports showing the rapid increase and accumulation of the free negroes in the State usually gave rise to some zeal for proceeding against free negroes who remained in violation of the law.<sup>202</sup> The number and the deportment of these negroes in a community went far toward determining the length to which the local officials would go in prosecuting them. In the counties of western Virginia, where but few negroes resided, almost no use was made of this law. In

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<sup>200</sup> Historical Collections of Virginia, p. 157.

<sup>201</sup> MS. Petitions, Hampshire County, 1836, A 7904; Loudoun County, 1836, B 1849; Loudoun and Fauquier Counties, 1847, B 1952.

<sup>202</sup> "The excitement which now prevails will in a little while entirely subside and you will see things move on just as they have done until the next census, when we shall again begin to stir and flutter for awhile" (Richmond Whig, December 11, 1845).

most of the eastern counties the prescribed penalty—sale into slavery—was so much at variance with sentiment that grand juries usually refused to indict, or attorneys refused to prosecute, violators of the law.<sup>203</sup> When indictments were made, the cases were continued from time to time or finally dismissed.<sup>204</sup>

When arrests, prosecutions, and sales of free negroes were made, the object was usually to make examples of some that all others might take warning and leave the community. The overseers of the poor of Accomac County held a meeting in 1825, and determined to make an example of one negro, thinking that they would by this means be spared the necessity of selling as slaves the free negroes who had become unlawful residents under the act of 1806.<sup>205</sup> A negro named Jack Bagwell was the unlucky victim; but a single example was not sufficient to induce all other free negroes liable to sale to quit the community, and at a meeting held the following year the Board of Overseers ordered that notice be posted throughout the county "that the Overseers of the Poor . . . will sell one free negro in each district of this county for every month from this date."<sup>206</sup>

In pursuance of the order, seven negroes were sold into slavery on June 5, 1826. The maximum price received for any one of the seven freemen was thirty-six dollars and fifty cents. The fact that some of them brought so low a price as one dollar creates a doubt as to whether the purchasers expected to force them into bondage or whether they did not intend to allow them to escape from the neighborhood. In 1839 Richard Rew purchased at the price of five hundred and thirty dollars a free negro who had lived in Virginia contrary to law since his manumission in 1819.

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<sup>203</sup> MS. Orders of Northampton County, 1831-1836, pp. 136, 147, 505; MS. Petitions, Loudoun and Fauquier Counties, 1847, B 1952; Frederick County, 1828, A 6495.

<sup>204</sup> "By this mode, they were annually before the court, their cases called and continued and in this evasive way, they spent the remainder of their days in their old communities" (T. K. Cartmell, *Shenandoah Valley Pioneers and Their Descendants*, p. 521).

<sup>205</sup> MS. Petitions, Accomac County, 1825, A 91.

<sup>206</sup> *Ibid.*, 1826, A 80.



The negro made good his escape to New York, and Rew, who had paid a high price for him, expecting to subject him to actual bondage, appealed earnestly but in vain to the legislature for a refunding of the purchase money.<sup>207</sup>

Even such a timid and spasmodic enforcement of this law as these instances represent rendered the condition of a great number of free negroes anomalous and insecure. Not only those negroes emancipated after 1806, but also their posterity were liable to be sold as slaves, and many deserving negroes were forced to appeal to the humanity of their white neighbors to save them from banishment or sale. In 1834 Titus Brown, whose hair was white with age, related how he and his wife, childless and almost as old as he, had been "ordered to depart from the Commonwealth."<sup>208</sup> It was not often that a free negro of fair character was unable, even in times of excitement, to get his white neighbors to intercede in his behalf. These could usually bring about a relaxation of energy in the prosecution; or, as in the case of Archy Carey, they might "agree that so long as his conduct comports with his recommendation they will not enforce the law against him."<sup>209</sup> If in this way they could not render secure a negro threatened with sale or banishment, his white sympathizers would often draft earnest appeals to the humanity of the legislators, and procure to these petitions hundreds of white subscribers. Very frequently the legislature was moved to pass acts excepting certain free negroes from the operation of the law.<sup>210</sup> In some such way were tolerated nearly all ex-slaves who ventured to assume the risk of losing their freedom. It was asked in the House of Delegates in 1832 why the laws providing for the banishment or sale of certain free negroes had not been carried out. The answer was: "Because its provisions were in violation of the feelings of the people. A thousand such laws would

<sup>207</sup> House Journal, 1839-1840, p. 205.

<sup>208</sup> MS. Petitions, Loudoun County, 1834, B 1830.

<sup>209</sup> MS. Petitions, Campbell County, 1830, A 1013.

<sup>210</sup> For examples, see Acts, 1821-1822, p. 84; 1833-1834, p. 316; 1834-1835, p. 240; or Acts of any year from 1812 to 1848.



fall to the ground and be inoperative for lack of public sentiment."<sup>211</sup> The same explanation was given by Governor Wise in his message to the legislature in 1857. "It would be more humane and more just," he said, "to sell them wholesale into slavery" than to force upon them dispersion and extinction in the cold climate of the free States; "but the moral sense of our people would revolt at a violation of individual and personal rights like this and no such usurpation would be tolerated by public sentiment."<sup>212</sup>

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<sup>211</sup> Richmond Enquirer, February 14, 1832.

<sup>212</sup> House Documents, no. 1, 1857, p. 151.

## BIBLIOGRAPHY

Lack of space necessitates the omission from this list of a large number of secondary authorities having bearing upon, but not contemporary with, some portion of the period treated in this monograph. Footnote references to the most useful of the works of postbellum writers touching the subject herein treated must suffice to show the extent of the author's indebtedness to authorities. With the exception of a few county or local histories having special value because of their limited territorial scope, only primary sources are here enumerated.

### MANUSCRIPT

- A. COUNTY COURT RECORDS,—Orders, Deeds, Wills, Inventories, and so forth; certified copies transcribed from the original records in pursuance of an act of the Virginia State Legislature and preserved in the Virginia State Library in Richmond, Virginia. 19 vols., folio:
1. Accomac County, 1632-1640, 1676-1690.
  2. Elizabeth City County, 1684-1699.
  3. Essex County, 1695-1699.
  4. Henrico County, 1677-1692, 1682-1701.
  5. Warwick County, 1748-1762.
  6. York County, 1633-1694, 1638-1648, 1657-1662, 1664-1672, 1675-1684, 1677-1692, 1677-1699, 1684-1687, 1687-1691, 1690-1694, 1694-1702, 1694-1697.
- B. COUNTY COURT RECORDS,—Orders, Deeds, Wills, and so forth; original records:
1. Henrico County, various volumes, 1776-1860, in County Court House, Richmond, Virginia.
  2. Lower Norfolk and Norfolk County, 1637-1646, 1646-1651, 1686-1695, and various volumes, 1700-1860, in Norfolk County Court House, Portsmouth, Virginia.  
In this county free negroes and mulattoes were registered in volumes kept for that purpose only: vol. 1, 1802-1852; vol. 2, 1852-1861. Concerning each free negro registered by the county court clerk there was recorded the answer to the following queries: Name, How free, Age, Height, Complexion, Marks or Scars. Each negro was numbered and the date of his registration recorded.
  3. Northampton County, 1632-1640, 1640-1645, 1645-1651, 1651-1654, 1654-1655, 1655-1658, 1657-1664, 1683-1689, 1689-1698, 1710-1720, and various volumes, 1720-1860.

Records of the Hustings Court, Richmond, Virginia, various volumes, 1782-1860.

Ordinances of the City of Richmond, 3 vols., 1804-1860.

**C. PARISH RECORDS.**

At Episcopal Theological Seminary, Alexandria, Virginia:

1. Register of Christ's Church, Middlesex County, Virginia, 1653-1812.
2. Register of Kingston Parish, Mathews County, Virginia, 1674-18—.
3. Vestry Book of Charles Parish, York County, Virginia, 1670-1800.

At Bruton Church, Williamsburg, Virginia:

4. Register of Middletown and Bruton Parishes, 1662-1797.

At Library of William and Mary College, Williamsburg:

5. Register of Abingdon Parish, transcribed by Lyon G. Tyler.
6. Register of Charles Parish, 1648-1800, transcribed for Library of William and Mary College.

**D. RECORDS OF FRIENDS' MEETINGS, at Park Avenue Meeting House, Baltimore, Maryland.**

1. Minutes of the Baltimore Yearly Meeting held at West River and Third Haven, 3 vols., 1677-1758, 1754-1764, 1798-1821.
2. Condensed record of the action of yearly meetings on questions relating to slavery and the slave trade, 1760-1819.
3. Minutes of the Warrenton and Fairfax Quarterly Meeting, 1776-1787.
4. Minutes of the Warrenton and Fairfax Quarterly Meeting of Women Friends, 1775-1787.
5. Minutes of the Warrenton Quarterly Meeting, 1787-1801.
6. Minutes of the Fairfax Quarterly Meeting, 1787-1850.
7. Minutes of Crooked Run Monthly Meeting, 1782-1789.
8. Minutes of Fairfax Monthly Meeting: vol. A, 1745-1776; vol. B, 1776-1802; vol. C, 1802-1845.
9. Minutes of Hopewell Monthly Meeting: bk. 1, 1759-1777; bk. 2, 1777-1791; bk. 3, 1791-1811; bk. 4, 1811-1851.
10. Minutes and Proceedings of Goose Creek Monthly Meeting, 1785-1818; 1818-18—.

**E. Records of the General Court of Virginia, transcribed by Conway Robinson, 1640-1661, 1670-1676. Virginia Historical Society.**

**F. Legislative Petitions of Virginia, 1776-1860.**

This collection of original manuscript documents, one of the most important sources of this monograph, is preserved in the archives of the State and is divided into as many groups as there were counties from which the petitions or memorials originated. The arrangement within the county groups is with reference to chronology. Fifteen thousand five hundred documents are catalogued and arranged in the archives in upright filing cases, each document being assigned to a stiff folder, folio size, having upon it a letter and a number which distinguishes it from every other document in the files. The numbers run in two series, A and B. Series A runs from 1 to 10,000. Series B is complete from 1 to 5500; and the two series combined cover the counties from Accomac to Orange. The county groups from P to Y inclusive are wrapped separately in bundles, awaiting the systematic arrangement of the

other county groups. In most instances double reference by date and by number has been made in the footnotes of this monograph to the petitions that are filed in the cases. Little if any use has been made, up to this time, of this, one of the richest sources for Virginia history during the period of the Commonwealth. The documents contain invaluable information about almost every subject that was of interest to the people of the various localities of the State within the period covered.

- G. Virginia Land Patents, folio, vols. 1 and 2, 1623-1643; vol. 3, 1643-1651; vol. 4, 1652-1655; vol. 5, 1655-1664; vol. 6, 1666-1679. Land Office, Richmond.
- H. Tax Books (for various counties), 1856-60. Auditor's Office, Richmond.
- I. Transcripts made from original papers in the British Public Record Office, London. By Angus W. MacDonald, 7 vols., 1619-1695; containing abstracts or complete transcripts of 581 documents relating to the settlement and early history of Virginia. By William Noel Sainsbury, 20 vols., 1606-1740; containing abstracts of 5108 documents relating to early Virginia history. Virginia State Library.
- J. Letter Book of the Executive of Virginia, 1844-1848, folio. Virginia State Library.
- K. Proclamation Book; containing the proclamations of the Governors of Virginia from 1786 to Aug. 31, 1801. Virginia State Library.
- L. Land Books of the City of Richmond, 1856-1860. City Hall, Richmond.

#### LAWS AND COURT DECISIONS

- 1. Statutes at Large of Virginia, 13 vols., 1619-1792. By William Waller Hening. Richmond, 1819-1820.
- 2. Statutes at Large of Virginia, 3 vols., 1792-1807. By Samuel Sheppard. Richmond, 1835-1836.  
Being an addition to Hening's Statutes, these three volumes are referred to in this monograph as vols. xiv, xv, and xvi of Hening.
- 3. Acts of the General Assembly of Virginia, 1807-1865.
- 4. Statutes at large of the Confederate States of America, 1861-1864, including both public and private acts and resolutions. Edited by James M. Mathews. Richmond, 1864.
- 5. Revised Code of Laws of Virginia, 2 vols. Richmond, 1819.
- 6. Supplement to the Revised Code of the Laws of Virginia. Richmond, 1833.
- 7. Code of Virginia. Richmond, 1849.
- 8. Code of Virginia. Richmond, 1860.
- 9. Constitutions of Virginia, 1776, 1830, 1851.
- 10. Reports of Cases Determined in the General Court and the Supreme Court of Appeals of Virginia:
  - (a) By Thomas Jefferson, 1 vol., 1730-1740 and 1768-1772.
  - (b) By Bushrod Washington, 2 vols., 1790-1796.
  - (c) By Daniel Call, 6 vols., 1790-1825.
  - (d) By William W. Hening and William Munford, 4 vols., 1806-1810.

- (e) By William Munford, 6 vols., 1809-1820.
- (f) By Francis W. Gilmer, 1 vol., 1820-1821.
- (g) By Peyton Randolph, 6 vols., 1821-1828.
- (h) By Benjamin Watkins Leigh, 12 vols., 1829-1842.
- (i) By Conway Robinson, 2 vols., 1842-1844.
- (j) By Peachy R. Grattan, 16 vols., 1844-1865.
- (k) Virginia Colonial Decisions. The Reports by Sir John Randolph and Edward Barradall of Decisions of the General Court of Virginia, 2 vols., 1728-1741. Edited by R. T. Barton. Boston, 1909.

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2. Journals of the House of Delegates of the Commonwealth of Virginia, 1776-1865. [Journals for May session of 1782 and session of 1796 are missing.] Richmond.
3. Journals of the Senate of the Commonwealth of Virginia, 1778-1865. [Missing Journals: 1780-1784, 1791-1799, 1802-1828, 1836-1838, 1854-1855, 1856-1860.] Richmond.
4. Proceedings of the Convention of Delegates for the Counties and Corporations of the Colony of Virginia, held at Richmond Town, in the County of Henrico, 1775. Richmond, 1816.
5. Proceedings and Debates of the Virginia State Convention of 1829-1830. Edited by Ritchie and Cook. Richmond, 1830.
6. Journal, Acts, and Proceedings of a General Convention of the State of Virginia, 1850. Richmond.
7. Journal of the Congress of the Confederate States of America, 1861-1865. In 7 vols. Issued as Senate Document No. 234, 58th Congress, 2nd Session. Washington, 1904.
8. Documents of the House of Delegates, containing the messages of the Governors to the General Assemblies and annual reports of the public officers of the State, and of boards of directors, visitors, superintendents, and other supervisors of public institutions of Virginia, 1814-1865.
9. Documents of the Senate, containing bills introduced and passed by the Senate, reports of commissions and various other state papers, 1831-1865.
10. Colonial Records of Virginia (1619-1680). Issued as State Senate Document, Extra, 1874. Richmond.
11. A Collection of the Official Publications of the Confederate States Government. Virginia State Library.
12. The Federal Censuses of the United States, 1790 to 1860, volumes on population.

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1. The Richmond Examiner and Argus, August, 1800-February, 1801.
2. The Virginia Argus, Richmond, February, 1804-December, 1805.
3. The Daily Dispatch, Richmond, 1852-1865.
4. The Enquirer, Richmond, May, 1804-December, 1864.

5. The Virginia Gazette, Williamsburg, January, 1767-December, 1768; January, 1771-December, 1777; February, 1779-December, 1779.
6. The Virginia Gazette and General Advertiser, Richmond, March, 1791-December, 1809.
7. The Norfolk and Portsmouth Herald, January-December, 1847.
8. The Constitutional Whig and The Daily Richmond Whig, Richmond, 1824-1865.
9. The Recorder, Richmond, 1802-1803.

## FILES IN THE LIBRARY OF CONGRESS.

10. The Virginia Gazette and the American Advertiser, Richmond, January, 1782-December, 1794.
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3. Calendar of Virginia State Papers. Edited by William P. Palmer. Vols. i-xi. Richmond, 1875.
4. Collections of the Virginia Historical Society, New Series. Edited by R. A. Brock. Vols. i-xx. Richmond, 1882-1891.  
The above serial publications are really source books of Virginia history. They make available in published form many original and valuable manuscripts from collections in the Virginia Historical Society, the Virginia State Archives, county archives, and in the possession of private individuals.
5. The Commercial Review of the South and West. A monthly journal of trade, etc. Edited by J. D. B. DeBow. Vols. i-xxxi. New Orleans, 1846-1861.
6. The Virginia Historical Register and Literary Advertiser. Edited by William Maxwell. Vols. i-vi. Richmond, 1848-1853.  
Contains extracts from "records, journals, diaries, letters, inscriptions and other relics of the 'olden time.'"
7. The Lower Norfolk County Virginia Antiquary. Edited by Edward Wilson James. Vols. i-v. Norfolk, 1897-1906.  
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3. The Vestry Book of Henrico Parish, Virginia, 1730-1773, from the original MS. By R. A. Brock. Richmond, 1874.
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6. Papers Relating to the History of the Church in Virginia, 1650-1776. Edited by William S. Perry. Privately printed. 1870.
7. BAGBY, REV. ALFRED. King and Queen County, Virginia. New York and Washington, 1908.
8. BRUCE, THOMAS. Southwest Virginia and the Shenandoah Valley. Richmond, 1891.
9. BURTON, REV. L. W. Annals of Henrico Parish, Diocese of Virginia and especially of St. John's Church, 1611-1884. Richmond, 1904.
10. CARTMELL, T. K. Shenandoah Valley Pioneers and Their Descendants. A History of Frederick County, Virginia, from its formation in 1738 to 1908. Compiled mainly from original records of old Frederick County, now Hampshire, Berkeley, Shenandoah, Jefferson, Hardy, Clarke, Warren, Morgan, and Frederick. Privately published by the author, 1909.
11. GOODWIN, REV. W. A. R. Historical Sketch of Bruton Church, Williamsburg, Virginia. Williamsburg, 1903.
12. WISE, JENNINGS CROPPER. Ye Kingdome of Accawmacke; or, the Eastern Shore of Virginia in the Seventeenth Century. Richmond, 1911.
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1. ALEXANDER, ARCHIBALD. A History of Colonization on the Western Coast of Africa. Philadelphia, 1849.
2. ANDREWS, E. A. Slavery and the Domestic Slave Trade in the United States. In a series of letters addressed to the executive committee of the American Union for the relief and improvement of the colored race. Boston, 1836.
3. ASBURY, REV. FRANCIS, BISHOP OF M. E. CHURCH. Journal from Aug. 7, 1771-Dec. 7, 1815. 3 vols. New York, 1821.
4. ASHMUM, J. History of the African Colony in Liberia, from December, 1821 to 1823. Compiled from the authentic records of the colony. Washington, 1826.  
Bound in "Slavery Pamphlets," in Virginia State Library.

5. BEVERLY, ROBERT. *The History and Present State of Virginia*, in four parts. By a native and inhabitant of the place. London, 1705.
6. BULLOCK, WILLIAM, GENT. *Virginia impartially examined and left to the publick view to be considered by all iudicious and honest men, etc.* London, 1649. Pp. 66.
7. BURK, JOHN. *The History of Virginia from its first settlement to the present day.* 11 vols. Petersburg, Virginia, 1804-1816.
8. BURNABY, ANDREW. *Travels Through the Middle settlements of North America, in the years 1759 and 1760.* Pp. 52.  
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9. "CALX." *Two Great Evils of Virginia and their one Common Remedy.*  
A pamphlet written September 17, 1859, and printed by John W. Randolph of Richmond. Pp. 18.  
One of the evils referred to was the free negro and the other was the seduction of slaves by abolitionists. Bound in "Political Pamphlets," vol. 12, in Virginia State Library.
10. CHASE, A. M., AND SANBORN, CHARLES W. *A Statistical View of the Condition of the Free and Slave States.* Compiled from official documents. Boston, 1856.
11. CHASTELLUX, FRANÇOIS JEAN. *Travels in North America in the years 1780-82.* Translated from the French by an English gentleman who resided in America at that period. 2 vols. London, 1787.
12. DABNEY, PROF. ROBERT L. *A Defence of Virginia in Recent and Pending Contests against the Sectional Party.* New York, 1867.
13. DEW, THOMAS R. *Review of the Debates in the Virginia Legislature of 1831-32.* Richmond, 1832.
14. FITZHUGH, GEORGE. *What shall be done with the Free Negroes.* Four essays written for the Fredericksburg Recorder, 1851.  
This is a biased argument in favor of reducing free negroes to slavery.
15. — —. *Sociology for the South, or The Failure of Free Society.* Richmond, 1854.
16. FORCE, PETER. *Tracts and Other Papers, relating principally to the Origin, Settlement, and Progress of the Colonies of North America, from the discovery of the country to the year 1776.* 4 vols. Washington, 1836-1846.
17. GARLAND, HUGH A. *The Life of John Randolph of Roanoke.* 2 vols. New York, 1851.
18. GODWYN, MORGAN. *Negro's and Indian's Advocate suing for their Admission into the Church: For a persuasive to the instructing and baptizing of the Negroes and Indians in our Plantations, To which is added a brief account of religion in Virginia.* London, 1680. Pp. 174.
19. — —. *A Supplement to the Negro's and Indian's Advocate, or some further considerations and proposals for the effectual and speedy carrying on of the Negro's Christianity in our plantations without any prejudice to their owners.* London, 1681. Pp. 12.
20. GOODELL, WILLIAM. *The American Slave Code in theory and practice: Its distinctive features shown by its statutes, judicial decisions, and illustrative facts.* Fourth edition. New York, 1853.



21. HAMMOND, JOHN. Leah and Rachel, or the Two Fruitfull Sisters Virginia, and Mary-Land: Their Present Condition, Impartially stated and related. London, 1656.
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24. HOWE, HENRY. Historical Collections of Virginia. Charleston, S. C., 1852.
25. HOWISON, ROBERT R. A History of Virginia from its Discovery and Settlement by Europeans to the Present Time. 2 vols. Richmond, 1848.
26. JAY, WILLIAM. Miscellaneous writings on Slavery. Boston, 1853.
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30. LEIGH, BENJAMIN WATKINS. The letter of Appomattox to the People of Virginia exhibiting a connected view of the recent proceedings in the House of Delegates on the subject of abolition of slavery; and a succinct account of the doctrines broached by the friends of abolition in debate; and the mischievous tendencies of those proceedings and doctrines. Richmond, 1832.
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A rare pamphlet in Virginia State Library.
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**THE QUINQUENNALES**  
**AN HISTORICAL STUDY**



**SERIES XXXI**

**NO. 4**

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**IN**  
**HISTORICAL AND POLITICAL SCIENCE**

**Under the Direction of the**  
**Departments of History, Political Economy, and**  
**Political Science**

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**THE QUINQUENNALES**  
**AN HISTORICAL STUDY**

**BY**

**RALPH VAN DEMAN MAGOFFIN, Ph.D.**

**Associate in Greek and Roman History**  
**and Roman Archaeology**

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## PREFACE

This investigation was undertaken because of the lack of exact information about an important office. Mommsen's statement that "ueber die Befugnisse der quinquennales sind wir fast ganz ohne specielle Nachrichten" was an incentive to research because the problem remained unsolved, and because the single attempt at solution in Neumann's monograph, *De Quinquennialibus coloniarum et municipiorum*, failed to clear up the questions involved in the inscriptions. Opportunity to enter into a special examination of this topic was afforded in my studies of municipal government in Praeneste, undertaken while I was Fellow in the American School of Classical Studies in Rome.

I am indebted to Professor H. Dessau of Berlin, who was good enough to read the manuscript of this article and to make some valuable suggestions and corrections. I wish also to express my gratitude for help from Professors Kirby Flower Smith, Harry Langford Wilson, John Martin Vincent, and Westel Woodbury Willoughby, of the Johns Hopkins University, and from Professor Frank Frost Abbott of Princeton University.

A collection of fine Roman coins from Spain, which was presented to the archaeological museum of the Johns Hopkins University by Mr. William Hepburn Buckler, one of the University trustees, has been of great use to me. There are numerous specimens in it which mention quinquennales, and from them I have been able to supplement and correct the publications of Cohen, Delgado, and Heiss.

R. V. D. M.





# THE QUINQUENNALES

## AN HISTORICAL STUDY

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The quinquennales were officials who performed approximately the same functions for many of the Roman colonies and municipalities as those exercised by the censors for Rome. This is a composite definition, but it shows fairly the general agreement of those modern authorities who have treated the quinquennales at any length. This general statement of fact may be accepted as established at the very outset; but as we are certain to find both likenesses and differences between the censors and the quinquennales, it will not be out of place to take first a brief survey of the history of the origin and development of the better known office and of the duties and functions of the more important official, with the expectation that a knowledge of the office of the censor will illuminate, if not entirely explain, many unrelated facts which concern that of the later and less known quinquennalis.

It was only a few years after the date usually assigned for the foundation of the Roman Republic that the patricians were forced to make their first political concession to the plebeians, and in the tribunate, which was the price of their return from Mons Sacer, to which they had seceded, the plebeians saw their first opportunity for political power. From that time forward until plebeians were eligible to practically every office in the state there was a continuous struggle between the two orders—between the patricians who were striving to retain the offices and the plebeians who were striving to get possession of them. That the number of Roman officials should increase with the growth of the state was inevitable, and in view of the inalienable and indivisible

quality of the Roman imperium it was also inevitable that the method of growth should be that which has been so aptly called "the progressive subdivision of the Roman magistracy."<sup>1</sup> As a rule the lower order in a state wins political preferment to successively higher offices with great difficulty, and by beginning at the very bottom. No doubt this is largely because in most cases its members are comparatively few in number or are too widely scattered to realize their power until after the offices have been created in the state and their definite succession has been fixed.

In Rome, however, we have a most interesting and instructive development of another kind. The plebeians at the beginning of the Republic formed probably more than half of the population of Rome, and, thanks to that service in the infantry to which they were liable and in which they all took part, they were a remarkably compact and homogeneous body. As far as we now know, their very first demand was for the consulship, the highest office in the state. It was quite clear that they would rest satisfied with nothing less. The tribunate which they gained from their first struggle with the patricians was only a temporary compromise. In 445 B. C. the patrician centuriate comitia was compelled to pass a law instituting military tribunes with consular power to take the place of consuls in such years as the senate might decide. In other words, the plebeians were now eligible to an office with consular authority. To be sure it was forty-five years before a plebeian attained the consular tribunate, but this was recognized as a concession, because in return for it the patricians were allowed a compensatory reservation, namely, the establishment of a new office, the censorship, to which only members of their own class were to be eligible. Again, in 367 B. C., when the plebeians accepted the patrician reservation of the praetorship as a balance to the concession, granted them in the *lex Licinia Sextia*, that one consul must be a plebeian, there seems to have been

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<sup>1</sup> The author owes this illuminating phrase to Professor Drake of the University of Michigan.

no more question as to the right of the patricians alone to fulfil the judicial duties of the praetorship than there was when they first assumed the duties of the censorship.

It is the truth, but not the whole truth, to say that the establishment of the censorship in the year 443 B. C. (or possibly 435 B. C.) was due to the growth in the duties of the chief magistracy, for it had just become constitutionally possible, by the election of six *tribuni militares consulari potestate*,<sup>2</sup> to have more than two men with consular power. This would have tripled the number of officials, and it seems fair to assume, therefore, that the duties of the censors were considered at the time to be outside the competence of a plebeian magistrate. Certain constitutional functions which the censors exercised are well known. They assessed the property of citizens in preparing and arranging a register according to tribes, classes, and centuries; they drew up and revised the lists of senators and knights; they had a large share in managing the finances of the state; they held assemblies (*contiones*) for purposes of the census, to impose fines, for lustration. It is thought probable<sup>3</sup> that the arrangement of the five class ratings as a basis for the reorganization of the army was connected with the institution of the censorship, and this belief is strengthened by the fact that the elections of the censors were ratified by the centuries and not by the *curiae*. At all events, everything goes to show that the primary function of the censors was to settle the status of Roman citizens.

The censors were two in number. They entered upon their office immediately after their election, which was at first for a period of five years. The time for actual performance of their duties was, however, very soon shortened to a year and a half,<sup>4</sup> although the five-year interval of election was always kept, at least in theory. The censors were

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<sup>2</sup> Bodies of three and eight are also mentioned, but six has the weight of the best authorities.

<sup>3</sup> Botsford, *The Roman Assemblies*, p. 79.

<sup>4</sup> Tradition assigns this change to a centuriate law, a *lex Aemilia* of 433 B. C.

practically unaccountable for official acts, but the fact that their joint action was necessary in important matters gave to the citizens a satisfactory safeguard. Two generations seem to have passed before the plebeians challenged the patrician right of the censorship, which had been granted in 443 B. C. It was a plebiscite of the year 367 B. C. which made plebeians eligible to this important position, but it was not until 351 B. C. that a plebeian became a censor. Finally, in 339 B. C., the centuriate lex Publilia Philonis stipulated that one of the censors must be a plebeian (*ut alter utique ex plebe censor crearetur*).

At some time between this date and 312 B. C. the people extended the authority of the censors by passing the Ovinian plebiscite, which transferred from the consuls to the censors the revision of the list of the senate.<sup>5</sup> But it is the year 312 B. C. which stands out in the annals of the censorship. In this year the Via Appia and the Aqua 'Appia, the first of the paved military roads and the first of the aqueducts, were built by the famous censor Appius Claudius Caecus. Undoubtedly the increase in governmental expenditure brought to the censorship increased importance, but the great personal influence of Appius also added to it much more of dignity and power. We are quite justified in believing that such a man could and did extend his authority ahead of legislation, and that he used his power to "preserve the integrity of the Roman character" by supervising morals and by inveighing against the degenerating tendencies of the time.

The year 265 B. C. may possibly be taken as the date at which the power of the censorship began to decline. At that time, upon the proposal of Caius Marcius Rutilus, who had been elected censor for a second term, a law was passed forbidding reelection to that office. In the year 212 B. C. the comitia, with the consent of the senate, took from the censor part of the supervision of the building and repair of public works. Sulla gave no attention to the censorship, as

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<sup>5</sup> See Botsford, *Roman Assemblies*, p. 307, and notes 5 and 6.

is shown by his own sumptuary legislation and by his plan to keep the senate full automatically by the increase in the number of quaestors. As a republican institution the censorship came to an end in 22 B. C. Under the Empire it amounted to very little, and finally dwindled away, its functions being absorbed by the growing power of the emperor. Such, in brief, is the history of the institution of the Roman censorship, its earliest function, its growth and enlarged sphere of action, and its subsequent decline; and the justification for this review is that the censors were the prototypes of and the models for the quinquennales.

Beginning now the investigation of the functions of the quinquennalis, difficulties arise at the very threshold. The history of the censor has a definite beginning. It starts with the institution of the office itself. In regard to the quinquennalis, on the contrary, we have no idea when this official first began to perform his duties. Again, the word "censor" reflects the most important functions of the office, which was chiefly concerned with the census. The word "quinquennalis" does not reflect clearly the function of the office. Indeed, it seems to be quite casual, except that quinquennalis is associated with quinquennium, the word which was used for the period between the successive elections of censors, as may be seen in the *lex repetundarum*, where the expression reads: [Pequnia] post quinquenium populei fiet.<sup>6</sup> It is also difficult to decide whether the title is the result of a gradual abbreviation of an extended designation such as "IIviri (IIIIviri) censoria potestate quinquennales," or whether it is a term designedly fixed and legalized by some such law as the *lex Iulia* of the year 90 B. C. As a matter of fact, the title *duovir quinquennalis* standing alone is a usage found earlier in our present sources than the longer designations.<sup>7</sup>

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<sup>6</sup> *Lex Acilia Repetundarum* 66, in Bruns, *Fontes iuris Romani* (7th ed.), p. 69.

<sup>7</sup> Marquardt, *Staatsverw.* i (2d ed.), p. 160, and n. 13. For the reason that quinquennium means 'every fifth year' instead of 'every fourth year,' according to the more usual method of Roman

Again, we hear much more about the censors than about the quinquennales, and what we hear is more trustworthy. The censors were highly honored officials in the great city of Rome, and therefore are frequently mentioned in the literature. The quinquennales were the officials of many municipalities in Italy and the provinces and were doubtless held in high honor in those places, but were not likely to be mentioned by the writers of Roman history. Our information about the quinquennales, therefore, comes from local sources, in the main from sepulchral and honorary inscriptions, the earliest of which are too brief to tell us much, and the later ones too fulsome to inspire complete confidence. For more than a hundred years the censors were chosen only from the patrician nobility; in the majority of cases we cannot tell who the quinquennales were. Many inscriptions which identify those officials make one hesitate to enlarge upon a theory of the status and rank of the old settlers in the municipalities as compared with the new. Furthermore, the censors were elected to their office, while some at least of the quinquennales gained their position by appointment. Finally, two other important differences remain to be considered: first, the length of the tenure of both offices, and second, the eponymous character of the office of quinquennalis and not of censor. We have seen that the official term of the censors was limited to a year and a half, and no other proof is needed to show that the censorship was considered an extraordinary position and therefore not to be connected with the regular offices, which were annual. Yet the quinquennialship was, or came to be, a fixed office, and its duration was for one year. This is clearly to be seen in the inscriptions which concern Petinius Aper<sup>8</sup> (*huic anno quinquennial(itatis) Petini Apri etc.*) and M. Vibius Auctor<sup>9</sup> (*de*

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computation, see Mommsen, *Staatsrecht*, ii, 1 (3d ed.), p. 344, and n. 1; Mommsen, *Roem. Chron.*, p. 162 ff. The Greek titles are ἀρχων ὁ διὰ πέντε ἐτῶν τιμητικός and ἀρχων ὁ πενταετηρικός and δυνάστης πενταετηρικός.

<sup>8</sup> C. I. L. xi, 6354.

<sup>9</sup> C. I. L. x, 5670.

Ilviro quinquenn(ali) in *prox(imum) annum* fieri placere M. Vibium Auctorem).

In regard to the second difference, it is not difficult to understand why the censorship and the quinquennialship were unlike in their eponymous character. To date a Roman year by a censorship was impossible for two reasons: first, because the consulship was the older and more important position; and second, because the consuls held office for exactly a year and the censors for a year and a half. On the other hand, the quinquennales had a term of one year, and during that time exercised the functions of this office in addition to their other duties as the highest administrative officials in the municipalities. There is evidence of the eponymous character of this double office in an inscription from Novae in Dalmatia (Ilviris Aurr. Maximo et Annaeo),<sup>10</sup> and still better evidence from one from Veii, although the date, 249 A. D., is late (III non. Ian. Aemiliano II et Aquilino cos. P. Sergio Maximo M. Lollio Sabiniano II vir Q Q).<sup>11</sup>

Before leaving this matter of the differences between these two officials, it seems worth while to note one more interesting fact in this connection. In the early Republic the censorial functions were taken away from the chief officials of the state. In the late Republic and early Empire they were given back to the chief officials of the municipalities.

From what has been said it will be seen that between the censors and the quinquennales there are at least six points of difference, namely, the origin of the two offices, their titles, the civic status of their incumbents, the manner of election, the length of tenure, and the eponymous character of the one and not of the other. From the modern point of view these differences are no doubt accentuated by the fact that the literary evidence, as already stated, is much more abundant for the censorship than for the quinquen-

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<sup>10</sup> C. I. L. iii, 1910.

<sup>11</sup> C. I. L. xi, 3780.

nalship. Nevertheless, after every possible deduction is made, these differences are real. The censorship belonged to the Roman metropolis and to the formative period of the Roman Republic, and was exercised by men of national reputation and importance. The quinquennialship belonged to the Roman country town, to the period of the late Republic and early Empire—a period increasingly inhospitable to republican institutions—and in the main was exercised by unimportant and indiscriminate soldiers and provincials.

Although these differences are real and important, the resemblances are none the less so. First of all, the quinquennales, like the censors, composed a collegium of two persons. It is true that as far as the evidence of the inscriptions is concerned the great majority of the quinquennales are mentioned singly, but this does not affect the validity of our statement, for the inscriptions mention as colleagues no less than sixty-two pairs of quinquennales.<sup>12</sup> Two examples of these, important because of the distinction in title, may be considered as sufficient for the purpose of illustration: C. Caesius M. f. C. Flavius L. f. duovir(i) Quinq(uennales),<sup>13</sup> and Cn. T. Caesii Cn. f. Tiro et [P]riscus IIII vir(i) qu[i]nq(uennales) sua pecun(ia) fecerunt).<sup>14</sup>

Another likeness appears in the fact that the duties which were later assumed by the quinquennales and the censors were performed before the creation of these officials by the two chief officers of the town or city state, that is, the duoviri and the consuls. Marquardt<sup>15</sup> has brought this out very clearly in his *Roemische Staatsverwaltung*. He goes further, and associates the functions of the censors with those of the quinquennales by tracing in a brief but authoritative way the gradual changes whereby the census of the Italian municipalities was first taken in the same way as at Rome, and

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<sup>12</sup> See note 55.

<sup>13</sup> C. I. L. xiv, 2980.

<sup>14</sup> C. I. L. xi, 5378.

<sup>15</sup> Vol. i, pp. 159–160 (2d ed.) = Marquardt-Mommsen, *Handbuch d. roem. Alterthuemer*, Vol. 4.



later was taken at the same time, the duties of the censors being left as much as possible in the hands of local officials, who were known as quinquennales. He notes that the beginning of this change was made in the year 204 B. C. in connection with the settlement of the revolt of the twelve Latin colonies during the Second Punic War. He finds duoviri exercising censorial functions in the year 105 B. C. in the Roman colonia Puteoli, in Iulius Caesar's colonia Genetiva, and still later, in imperial times, in the municipium of Malaca in Spain. Although the old title of censor is still found in a few instances, the new quinquennalis comes more and more into prominence, and finally takes over practically all the old censorial duties. Marquardt, however, assumes that the formal change from censor to quinquennalis took place immediately after the passage of the lex Iulia of the year 90 B. C. There is no proof that this was true, but it is clear enough that the functions of the two officials were practically the same.

The fact that there was a five-year interval between the elections both of quinquennales and of censors brings forward still another point of similarity. In each case the name for this intervening period is lustrum. The evidence for the use of this term in connection with the censorship is unquestioned, and we should probably be justified in assuming the same usage for the quinquennialship from the clause in the lex Iulia Municipalis of the year 45 B. C. which made the census year contemporaneous in Rome and in her municipia, and also from the list of officials from the town of Aquinum, which shows quinquennales for the year 68 A. D. and quite certainly also for 73 A. D., five years later.<sup>16</sup> There is also inscriptional evidence for the use of the word lustrum in this connection.<sup>17</sup> A certain Tiberius Claudius Maximus died after his election to the office of quinquennalis, and his mother, as a memorial to him, paved at her

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<sup>16</sup> C. I. L. x, 5405.

<sup>17</sup> A second illustration cited by Marquardt, *Roem. Staatsverw.* i, 162, n. 1 (2d ed.), from Orelli, 2547 (= C. I. L. ix, 1666), is, I think, not a case to the point.

own expense three miles of a road *intra lustrum honoris eius*.<sup>18</sup> These, then, are the more important differences and likenesses between the quinquennales and the censors, in the historical development and in the functional capacity of their respective offices. From the evidence it would seem that we are clearly justified in asserting that the quinquennales were municipal censors.<sup>19</sup>

The literature on the quinquennalis is in amount rather inconsiderable. The word as a title is found so seldom in Roman literary sources that any discussion or investigation of the official who bore it was quite impossible. Not until the institutional side of Roman history was taken up by

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<sup>18</sup> C. I. L. ix, 1156.

<sup>19</sup> Marquardt, *Staatsverw.* i (2d ed.), p. 157, n. 4: "Zumpt, *Comm. ep.* i, pp. 73-158; Henzen, *Annali*, 1851, p. 5 ff., 1858, p. 6 ff., 1859, p. 208 ff.; Norisius, *Cenotaphia Pisana*, Diss. i, ch. 5 (In *Thesaurus Antiq. Ital.*, viii, 3, p. 68c, and E); Oliverius, *Marmora Pisarense*, p. 68 ff.; Eckhel, *D. N.* iv, 476; Savigny, *Gesch. d. R. R. im Mittelalter*, i, p. 41." Oliverius was inaccessible to me. General bibliography, Mueller's *Handbuch* 4 (2d ed.), 181-182. Further discussion of the quinquennales in Madvig, *Die Verfassung und Verwaltung d. Roem. Staates*, ii, 14 ff.; Orelli-Henzen, *Insc. Lat.*, iii, p. 423; Bull. dell' *Inst.*, 1871, p. 148; *Not. d. Sc.*, 1880-81, p. 474 ff.; Bull. *Imp. Arch. Germ.*, 1890, p. 287; notes accompanying C. I. L. x, 114, 5405, 6104; xii, 697; Marquardt, *Staatsverw.* i, p. 184-186, especially note 6, p. 184. A Leipzig dissertation of 1892 by I. Neumann, *De Quinquennalibus coloniarum et municipiorum*, which I obtained with considerable difficulty, proved to be something of a disappointment. In my judgment its value is impaired by its polemic attitude toward Zumpt. Many inscriptions used by the author have been corrected in later publications, and certainly not all of the evidence has been examined by him. Nor do any of his conclusions except one, with which, following Mommsen, I disagree, bear on the points given in this paper. A. Sebastian, *De Patronis Coloniarum atque Municipiorum Romanorum* (Halle Diss., 1884); F. Spehr, *De Summis Magistratibus Coloniarum atque Municipiorum* (Halle Diss., 1881); H. de Bousquet De Florian, *Des elections municipales dans l'empire Romain* (Paris Diss. in Roman Law, 1891), offers a few scattered comparisons and suggestions of interest. Arnold, *Roman Provincial Administration*, 258; Abbott, *Roman Political Institutions*, 358; Halgan, *Provinces senatoriales sous l'Empire romain*, 144; O. Leuze, *Zur geschichte der roemischen censur*, Halle, 1912, pp. 61, 148.

such men as Savigny and Mommsen and the evidence of inscriptions began to be recognized was attention attracted to the not infrequent occurrence of the title of the *quinquennalis*, and that official became necessarily an object of inquiry.

Among earlier investigators who fixed in a general way the place and functions of the *quinquennales*, Zumpt and Henzen deserve the most credit, and in recent years the more detailed accounts are furnished by Marquardt and Neumann. The substructure of all the literature mentioned in note 19 is a rather small number of inscriptions, the information being confined to a few facts often repeated. The investigations, however, have led to sufficiently correct generalizations, and what has been presented in the preceding pages is simply a recapitulation of the well-attested facts which concern these municipal censors, the *quinquennales*.

There are, however, a number of unsolved problems the answers to which should help materially toward a final and authoritative statement of the place which the *quinquennales* occupied in the administrative officialdom of the Roman municipalities. The observations which follow are the result of a study of all references to *quinquennales* which the author has been able to find on coins, in literature, and in inscriptions. The tabulated list from which were gathered the facts on which this article is based contains the names of nine hundred and thirty-seven *quinquennales*; this does not include fifty-eight inscriptions which mention those officials but which are so fragmentary that they could not be used with safety.<sup>20</sup>

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<sup>20</sup> These 58 inscriptions are: C. I. L. iii, 170, 376, 611, 1486, 2088; v, 59, 63, 2536, 6797, 6965; vi, 29739, 29740, 29748 (but not belonging to Rome); viii, 2244, 3294, 7115 b, 15497, 15859, 16530, 21065 (= 9411); ix, 427, 457, 690, 738, 981, 1175, 1662, 2116, 2673, 2685, 2850, 2962, 3102, 3691, 3834, 3956, 3957, 4549, 4890, 5078, 5454, 5793, 6363, 6365; x, 48, 1461, 4375, 4592, 5973, 6244, 6586, 6645, 6682, 7356; xi, 711, 712, 1332, 1342, 1527, 1752, 1849, 2128, 3008, 3148 a, b, 3260,

First of all, a better classification of quinquennales is very much needed. The old Forcellini-De Vit lexicon may be called with a great deal of justification the *locus classicus* for their proper assignment to definite groups;<sup>21</sup> but there, as in other places where an extended investigation of the quinquennales is to be found, no clear distinction is made between the two groups of those who served the municipalities (a term meant to include both *municipia* and *coloniae*) in a political capacity and those who, in a non-political capacity as far as the state was concerned, served as high officials in certain religious and labor organizations. By a classification of the quinquennales into two groups of political and non-political officials it is hoped that a basic division can be attained. A study of the quinquennales in the second group offers no explanation of the establishment of such an office or of the method of election or appointment to it, and incidentally but little information except in survivals for the functions which it exercised. It is to the examination of the officials in the first group that this paper will direct its particular attention. The classification which is offered is as follows:—

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4373, 4405, 4989, 5008, 5224, 5698, 6335, 6386; xii, 4371, 4433, 4434; xiv, 2081, 2472, 2621, 3020, 3581, 4247; Eph. Ep. vi, 275; Not. d. Sc., 1887, p. 32 b, p. 32 u; 1888, p. 563; L'Année Epig. 1903, no. 138; doubtful: C. I. L. viii, 19917; ix, 3002; x, 5850, 5851; Not. d. Sc., 1900, p. 51; 1910, p. 408.

<sup>21</sup> *Quinquennalis* (Forcellini): 1. *Magistratus* (Livy, iv, 24, 4); 2-4. *Quinquennales ludorum* (Suet. Aug. 98: *Augustalia*; Suet. Nero 12: *Neronia*; Spartianus, Hadr. 27, 3); 5. *IIviri vel IVviri cens. pot. QQ. in municipiis et colonis* (Spartianus, Hadr. 19, 1); 6. *Ubi honor per integrum etiam lustrum durabat*; 7. *Eligebatur ad hoc munus aliquis imperator aut Caesar aut insignis aliquis vir, qui ibi non residebat, non hic illud administrabat per se, sed per vicarium, qui praefecti nomine designabantur*; 8. *Praetores vel aediles loco IIvirum et IIIvirum quinquennialitatem assumebant*; 9. *Octoviri Quinquennales*; 10. *Quinquennalis in collegio Augustalium*; 11. *Magistri Quinquennales*.

## I. QUINQUENNALES AS POLITICAL OFFICIALS IN THE MUNICIPALITIES

### 1. Quinquennales elective.

A. Quinquennales who had been neither quaestors nor aediles.

*a.* Civil. *b.* Military.

B. Quinquennales who had been quaestors or aediles or both.

### 2. Quinquennales appointive or honorary.

A. Quinquennales of high rank.

*a.* Members of the imperial family of Rome; *b.* Praefects appointed by members of the imperial family; *c.* All others.

B. Quinquennales whose only other offices were of a religious nature.

### 3. Otherwise unclassified.

*a.* Quinquennales feriarum, agonum, etc.; *b.* Octoviri Quinquennales; *c.* Treviri Quinquennales; *d.* All others.

## II. QUINQUENNALES AS NON-POLITICAL OFFICIALS OF COLLEGIA AND CORPORA

### 1. Seviri et Quinquennales.

### 2. Quinquennales collegiorum and Quinquennales corporum.

*a.* Quinquennales; *b.* Magistri Quinquennales; *c.* Quinquennales perpetui.

The second division can be dismissed with a very few words, because the details concerning corpora and collegia and their officials can be found in the very excellent works of Liebenam<sup>22</sup> and Waltzing,<sup>23</sup> and in the comprehensive articles by Ruggiero in his *Dizionario Epigrafico* and by Kornemann in the *Pauly-Wissowa Real-Encyclopaedie* (under "collegium"). The last-mentioned article contains

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<sup>22</sup> Liebenam, *Zur Geschichte und Organisation des roemischen Vereinswesens*.

<sup>23</sup> Waltzing, *Étude historique sur les corporations professionnelles*.

also a full bibliography. Furthermore, as already indicated, the information about the quinquennales of *collegia* and *corpora* offers nothing either new or important. Justice will have been done when it is said that in the late Empire a very small number of quinquennales are found to have served here and there outside of Rome as honorary censors of morals, as superintendents of games, or as guardians of some family or priestly cult. In Rome and Ostia, where the inscriptions of one hundred and eighty-eight out of the total of two hundred and fifteen such officials are found, they appear only as the chief officers in various bodies known as *collegia* and *corpora*. In a few of these inscriptions the quinquennales are seen to have had the duty of looking after the finances of their societies, in others to have had the control of the membership; in these few instances there remain the vestiges of the early functions of the quinquennales. In the great majority of cases, however, they served simply as presiding officers. In all there are twenty-eight different *collegia* and fifteen different *corpora* which had quinquennales in their lists of officials.

It is when we investigate the first division, the quinquennales as political officials in the municipalities, that problems begin to appear. At once the questions arise: Who was the first quinquennalis, and where and in what year did he perform the duties of his office? We do not yet know. As already mentioned, Marquardt would assign the dates of the first official quinquennales to the *lex Iulia* of the year 90 B. C. He would thus seem to give the credit for legalizing such a title to Lucius Iulius Caesar, the consul of that year and the censor of the following year. If such had been the case, the title would almost certainly have been used in the *lex Iulia Municipalis*, which was enacted by his relative Caius Iulius Caesar in the year 45 B. C. Rome was obliged to have a census of its citizens and of its allies both for purposes of taxation and in order to apportion military levies. It was a fairly definite Roman policy to leave as many matters as possible in the hands of the people of

allied or conquered territory, and this was a good plan, because nearly all the smaller towns within Roman jurisdiction soon began to imitate Rome in everything. These municipalities seem to have furnished Rome with a satisfactory census, otherwise the historians would hardly have made so much of the one case in which there was trouble. During the stress of the Second Punic War twelve Latin *coloniae* refused to send further contingents of troops. Rome was too hard-pressed just at the time to take up the matter, but in the year 204 B. C., two years before the close of the war, these *coloniae* were ordered to supply a double levy of troops and to pay a certain heavy tax. It was further ordered "that a census should be taken in those *coloniae* according to a formula appointed by the Roman censors, which should be the same as that employed in the case of the Roman people, and that a return should be made at Rome by sworn censors of the *coloniae* (*ab iuratis censoribus coloniarum*), before they retired from their office."<sup>24</sup>

From the year 204 B. C., when the Latin colonies just mentioned were compelled to take their census according to the Roman fashion, to the year 45 B. C., when Iulius Caesar made the date for taking the census contemporaneous in Rome and her municipia, there is time for a great many changes to have taken place. It is certain that *duoviri* took a census in Puteoli in 105 B. C. It is known that Sulla a little later did all he could to destroy the power of the censors, but the census continued to be taken. It is possible that in the *coloniae* which he himself founded Sulla did legalize the term *quinquennalis*, a title which quite probably had already begun to be used in an adjectival way to define the censorial duty of the chief officials in the small towns. *Quinquennales* appear in five of the seven *coloniae* which Sulla is known to have founded and in eight of the eleven others which he is supposed to have founded.<sup>25</sup> On

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<sup>24</sup> Livy, xxix, 15, 9-10.

<sup>25</sup> The Sullan colonies (Pliny, N. H. iii, *passim*; Mommsen, *Hermes*, xviii, 163 ff.; Pauly-Wissowa, *Coloniae*, 522, 34-50; Ruggiero, *Diz. Epig.*, *colonia*, 457, ii, a) do not all show QQ.: Abella (?), C. I. L. i,

a coin of Iulius Caesar from Pella in Macedonia appear the names of Caesar himself and Flavius Rufus as *duoviri quinquennales*;<sup>26</sup> on another of his coins from Parium in Mysia are the names of C. Arrius and C. Iulius Tanc . . . as *duoviri quinquennales* by decree of the municipal senate (*IIvir Quinq. ex d.d.*),<sup>27</sup> and from Pompeii there come the names of M. Porcius and Quinctius Valgus as *duoviri quinquennales* (*duovir Quinq. coloniai*).<sup>28</sup> Here we have, I believe, from inscriptions thus far found, the names of the first six men, including Iulius Caesar, who held the office of *quinquennalis*. These inscriptions can almost certainly be ascribed to a date before the year 45 B. C.; but it is quite certain that Iulius Caesar did not legalize the title *quinquennalis* in his *lex Iulia Municipalis* of that year, for that law says that whoever shall hold the highest office or the greatest competence in the municipalities shall take the census there at the same time that it is taken in Rome by the censor or by some other official.<sup>29</sup>

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1228; x, 1210, 1213, 1215; Abellinum (?), none; Aleria in Corsica, none; Allifae (?), C. I. L. ix, 2334, 2353, 2354, 2359; x, 4619; Ardea (?), Eph. Ep. viii, 667; Arretium, C. I. L. xi, 1846; Asculum (?), Eph. Ep. viii, 214; Faesulae, C. I. L. xiv, 172; Florentia (?), none; Grumentum (?), C. I. L. x, 226; Hadria (?), C. I. L. ix, 5016, Spartianus, *Hadr.* 19, 1; Interamnia Praetuttianorum (?), none; Nola, C. I. L. x, 1233, 1273; Paestum (?), C. I. L. x, 484, Eckhel, D. N. V. i, 158; Pompeii, C. I. L. iv, 170, 195 (756), 214 (596, 824), 279, 394, 736, 786, 1156, 1886, 2927, 2955; x, 788 (789, 851), 790, 792, 806, 820 (822), 830 (837-839, 947), 840 (943, 944, 946), 852, 858, 896, 904, 936 (960, 1074 d), 996, 1036; Not. d. Sc., 1886, p. 335, 1887, pp. 35, 39, 456, 1911, p. 426, 23, p. 459, 24; Praeneste, C. I. L. xiv, 2922, 2960, 2964, I, 9, II, 5, 6, 8, 2965, 2966, II, 11, 2974, 2980; Telesia (?), C. I. L. ix, 2234; Urbana, none.

<sup>26</sup> Cohen, *Desc. d. Mon. Imp.*, i, p. 19, no. 58 (Iulius Caesar). Pella.

<sup>27</sup> Cohen, l. c. i, p. 20, no. 63; Eckhel, D. N. V. iv, 480, who, however, seems to be wrong in making Arrius one of a body of *IIIviri*.

<sup>28</sup> C. I. L. x, 852. Mommsen dates this inscription in the time of Cicero.

<sup>29</sup> *Lex Iulia Municipalis* (Bruns, *Fontes* (7th ed.), p. 102 ff.), 142-143: *Quae municipia coloniae praefecturae c(ivium) R(omanorum) in Italia sunt erunt, quei in eis municipiis coloneis prae-*



The first century before Christ was a period of such strife between the leading men at Rome that it is probable that the small towns had their own affairs pretty much to themselves. It is quite possible that the word *quinquennalis*, used first in its natural adjectival form, gained favor in some places and became a noun and an official title, while in other places it failed to gain recognition. The matter is not clear because inscriptions which mention *quinquennales* are very few before the end of the Roman Republic. In addition to the six men mentioned above, there are the *duoviri quinquennales* Publius Aebutius and Caius Pinnius on a coin of Marcus Antonius, and the same Aebutius with another colleague, Iulius Herac . . . on a coin of Augustus, both from Corinth;<sup>80</sup> Lucilius Macer and Titus Annaeus Thraso from an inscription from Croton;<sup>81</sup> Lucius Titinius Sulpicianus of Dyrrachium,<sup>82</sup> and Publius Sextilius Rufus of Nola, a *quinquennalis* at Pompeii,<sup>83</sup> all of them *duoviri quinquennales* and all holding that office apparently before 23 B. C. There are also the two pairs of colleagues mentioned in the *fasti*, whose year of office can be stated positively. In the *Fasti Cuprenses* for the year 32 B. C. *quinquennales* are mentioned, although their names are lost,<sup>84</sup> and at Venusia in the year 29 B. C. Lucius Oppius and Lucius Livius are recorded as *duoviri quinquennales*.<sup>85</sup> These cases nearly complete the list, and for proof seventeen instances out of a total of nine hundred and thirty are not very many.

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*fectureis maximum mag(istratum) maximamve (or -umve) potestatem ibei habebit tum, cum censor aliusve quis mag(istratus) Romae populi censum aget, etc.* See introduction to *Lex Iulia Mun.* in Hardy, *Six Roman Laws*, pp. 147 and 160, n. 22.

<sup>80</sup> Cohen, *l. c.*, i, p. 47, no. 89 (M. Antonius), p. 160, no. 748 (Augustus); Mionnet, *Desc. de Méd.*, supp. 4, p. 56, no. 374, 375; Eckhel, *D. N. V.* ii, 244.

<sup>81</sup> *Not. d. Sc.*, 1911, supp. p. 90.

<sup>82</sup> *C. I. L.* iii, 605 (add. p. 989, where I think there is a mistake in reading the inscription to make Sulpicianus *praefectus fabrum* for the fifth time).

<sup>83</sup> *C. I. L.* x, 1273.

<sup>84</sup> *C. I. L.* i (2d ed.), p. 62 d (= *Eph. Ep.* viii, 224), Cupra Maritima.

<sup>85</sup> *C. I. L.* i (2d ed.), p. 66-67 (= *C. I. L.* ix, 422).

If Sulla is to be assigned the credit for having given a legal status to the quinquennales, reasons will have to be found to explain the small number of these officials in the fifty or sixty years after his time. Two are possible: Either Sulla's unpopularity was so great as to have kept a title legalized by him from coming very much into favor, or there are fewer inscriptions available from the first century before Christ than from either the first or the second century of our era. Both of these assertions are well founded, but they seem hardly important enough to warrant the attribution to Sulla, or to anyone else, of the legalization of quinquennalis as an official title. On the whole, although there may be grounds of belief that if some one did give legal authority to the term, Sulla was that man, still it seems more reasonable to hold that it was not officially adopted as a title, but that its use spread gradually because it was obviously so suitable.<sup>36</sup>

The sources which are available at this time (1913) give the names of seventeen men who filled the office of quinquennalis certainly between the years 50 and 23 B. C., and who therefore served during what may yet be called the time of the Roman Republic. In sixteen inscriptions these men have the title of duoviri quinquennales; in the seventeenth, which is fragmentary (the broken inscription of the *Fasti Cuprenses* mentioned above), the word duoviri is certainly to be supplied. Soon after the beginning of the Empire inscriptions which mention quinquennales are found in increasing numbers, and new titles also appear. A few men are designated as quattuorviri quinquennales; a somewhat larger number are known as praefecti quinquennales; and still more are called simply quinquennales. All these titles are quite regular, with the exception of the praefectus quinquennalis. This official served in place of and by the

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<sup>36</sup> In addition to the fact that the word quinquennalis is not used in the *lex Iulia Municipalis*, it is also true that it does not appear in the texts of the *leges colonia Genitiva Iulia (Ursonensis)*, *municipalis Salpensana*, or *municipalis Malacitana*.

appointment of various Roman emperors and members of the imperial family who had been chosen quinquennales.

The choice of members of the imperial family for the office of quinquennalis shows that this was the highest office in the gift of the various municipalities, but it does not appear from any of the sources so far available whether the citizens chose them as a mark of respect or from a sense of customary duty. If the latter were the true reason, it would bear out the subsequent contention that the quinquennales were originally appointive officials. It is clear enough, however, that these members of the imperial family did not actually perform the duties of the office, but appointed deputies, who were called praefecti quinquennales. In the town of Aquinum on the Via Latina in Southern Latium a certain Quintus Decius Saturninus served as praefectus quinquennalis three different times, at first for Tiberius, a second time for Drusus Caesar, and the third time for Nero the son of Germanicus.<sup>87</sup> An inscription at Formiae, also in Latium, states that one Arrius Salanus had been praefectus quinquennalis for Tiberius Caesar, and that he had lately been designated by Nero and Drusus Caesar as one of their praefecti quinquennales (praef. QVINQ. Neronis et Drus(i) Caes. designato).<sup>88</sup> There is an inscription from Interpromium in the country of the Marrucini which seems to show that there the municipal senate ratified the appointment of the praefectus quinquennalis of Germanicus Caesar. Sextus Pedius Lusianus Hirrutus had risen from the rank of a non-commissioned officer in the army to be a quattuorvir, and was then probably appointed by Germanicus as his praefectus quinquennalis. The senate of the town passed a decree which seems to have confirmed his office, but with a title that is not found elsewhere.<sup>89</sup> Later, Pedius was made quinquennalis for a second time, with the regular and customary designation.

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<sup>87</sup> C. I. L. x, 5393.

<sup>88</sup> C. I. L. x, 6101.

<sup>89</sup> C. I. L. ix, 3044: (. . .) praef. Germanici Caesaris quinquennalici (i)uris ex s. c.

In addition to the praefecti quinquennales who served as appointees, there were a number of men who acted as praefects for members of the imperial family and who for that reason seem to have been peculiarly available for the office of quinquennalis. An inscription from Brixia in Gallia Transpadana provides one such instance. Publius Papirius Pastor, after having held several offices, became the praefect of Nero, and then was chosen duovir quinquennalis.<sup>40</sup> The sources show that a considerable number of the Roman emperors were made quinquennales, and in the majority of cases their praefects are mentioned expressly. It is practically certain, therefore, that the praefectus quinquennalis held his office by appointment.<sup>41</sup>

An important question now demands attention, as to whether these town and village censors had previously held other offices in those municipalities in which they were serving as quinquennales. In the case of Roman emperors, of members of the imperial family, of kings in alliance with Rome, they certainly had not. None of these men reached the office by way of the municipal cursus honorum. The same appears to be true of the praefects who served as their appointees, for of course members of the imperial family did not themselves perform the duties of even the most important of the small municipal offices.

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<sup>40</sup> C. I. L. v, 4374. See also xi, 969, from Regium Lepidum: T. Pomponius Petra, . . . , praef. Germanici Caes., IIvir QVINQ., etc.

<sup>41</sup> Antoninus Pius, C. I. L. iii, 1497 (praefect was M. Cominius Quintus); Augustus, Heiss. Mon. Ant. de l'Espagne, 270, 12; C. Caesar, C. I. L. x, 904; Heiss, l. c. 271, 30-34 (no praefect mentioned); Claudius, C. I. L. xi, 6224; Commodus, C. I. L. x, 1648 (no praefect mentioned); Domitian, C. I. L. x, 5405; Drusus Caesar, C. I. L. ix, 4122 (?); x, 5393, 6101; xiv, 2964, II, 5; Heiss, l. c. 271, 28 and 29; Germanicus Caesar, C. I. L. ix, 3044; xi, 5224; xiv, 2964, II, 5; Hadrian, Spartianus, Hadr. 19, 1; Iuba Rex, Heiss, l. c. 269, 5; C. Iulius Caesar, Cohen, Desc. d. Mon. Imp. i, p. 19, no. 58; Nero Germanici f., C. I. L. x, 5393; Nero and Drusus, C. I. L. x, 6101; Heiss, l. c. 271, 28 and 29; Nero or Drusus, C. I. L. xiv, 2965; Ptolemaeus Rex, Heiss, l. c. 269, 6 and 7; Tiberius, C. I. L. ix, 4122; x, 5392, 5393, 6101; Heiss, l. c. 270, 14; Titus, C. I. L. x, 5405; Trajan, C. I. L. xi, 421; Caesar (?), C. I. L. iii, 593.

Again, it is to be observed that the surviving fasti or town calendars produce no quinquennalis who appears to have held any of the lower magistracies in his city. It may be urged that none of these fasti gives a list of officials sufficiently long to warrant a positive statement,<sup>42</sup> yet the calendar from Venusia covers a period of eight years (from 35 to 28 B. C.), the calendar from Nola four years (from 29 to 32 A. D.), and the fragments of the fasti from Praeneste four successive years. In none of these fasti is the man who held the office of quinquennalis mentioned in the preceding years as a quaestor or an aedile.

Numerous inscriptions which give the *cursus honorum* of men who had previously not held any of the regular offices in the cities where they were made quinquennales furnish additional illustrations of this view of the question. For example, Lucius Minicius Natalis, consul in 127 A. D., proconsul in 139 A. D., also the incumbent of a number of offices in the city of Rome, was given the honorary offices of patron of the city and curator of the shrine of Hercules Victor at Tibur (modern Tivoli), and also the office, whether elective or honorary we do not know, of quinquennalis *maximi exempli*.<sup>43</sup> Quintus Petronius Melior, whose inscription shows him to have been a Roman official at Ostia, had previously held offices in several places. He had been curator rei publicae Saenesium, and pontifex in both Faesulae (the modern Fiesole) and Florentia, and at the former place he had held the office of quattuorvir quinquennalis.<sup>44</sup> Caius Sallius Proculus, who was patron of the Aveiates Vestini, of the senate and people of Amiternum, and of the Peltuimates, and sacerdos and pontifex of the Lanivini, held the office of quinquennalis in two places, being quinquen-

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<sup>42</sup> The fasti which mention quinquennales are to be found as follows: C. I. L. iii, 7803 (Apulum in Dacia); C. I. L. ix, 338 (Canusium, for the year 223 A. D.); C. I. L. x, 5405 (Interamna Lirenas); C. I. L. x, 904 (Pompeii, for 40 A. D.); C. I. L. xiv, 2964, 2965, 2966 (Praeneste); C. I. L. x, 1233 (Nola); C. I. L. ix, 422 (Venusia).

<sup>43</sup> C. I. L. xiv, 3599 (about 130 A. D.).

<sup>44</sup> C. I. L. xiv, 172.

nalis at Amiternum and quinquennalis summus magister at Septem Aquae in the country of the Sabini.<sup>45</sup> On the other hand, there are several hundred inscriptions which give the successive regular offices previously held by the men who became quinquennales. Therefore, although a respectable number of quinquennales gained that honor without having filled the lower city offices, it must be admitted that they are the exceptions, and that the great majority previously held other offices in the municipalities where they performed their duties.

From the facts thus far considered, the conclusion is justified that the quinquennalis occupied an office to some extent extraordinary. It is evident that an appreciable number attained the position in some unusual fashion, and therefore that the irregularity, whatever it was, in the method of obtaining the appointment has an important bearing upon the subject. If these irregularities are a factor in the solution of our problem, a second question at once confronts us: Were the quinquennales necessarily citizens of the towns where they held office?

It is a well-known fact that it was the policy of Rome to encourage and to allow the citizens of the various towns to manage their own affairs, but it appears that many men who were quinquennales in certain places were not citizens there. An inscription in honor of Lucius Aconius Statura at Tifernum Mataurense says that he had been flamen, pontifex, and quinquennalis there, but the same inscription also says that he had been pontifex and quinquennalis at Ariminum, and he would hardly have been a citizen of both places.<sup>46</sup> At Hispellum (Spello) in Umbria an inscription mentions Caius Alfius Rufus as duovir quinquennalis of the colonia Iulia Hispellum, and then makes a further particular reference to the fact that he was also duovir quinquennalis in Casinum, his own municipium (et Ilvir QVINQ. in municipio suo Casini).<sup>47</sup> Another man, Marcus Aulus Albinus,

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<sup>45</sup> C. I. L. ix, 4206, 4207, 4399.

<sup>46</sup> C. I. L. xi, 5992.

<sup>47</sup> C. I. L. xi, 5278.

praefect of a cohort of soldiers, held the office of duovir quinquennalis in two different cities, Cubulteria and Allifae.<sup>48</sup> In Campania a certain Numerius Cluvius was a ubiquitous officeholder. He had been a duovir at Nola, a quattuorvir quinquennalis both in Caudium and in Capua, and a trevir quinquennalis at Puteoli.<sup>49</sup> Caius Luccius Paulinus, who seems to have been a citizen of the municipium Cottia, because, as his inscription shows, he had filled all the offices which that town had to offer (*omnibus honoribus perfunctus*), was a member of the municipal senate at Ariminum, to which body he had doubtless been added after having held the various offices there, among which was that of duovir quinquennalis.<sup>50</sup>

One more case in point is that of Quintus Pompeius Senecio, a man who could boast thirty-eight names. He was a Roman senator, and had been pontifex, praetor, consul, proconsul, praefect of the Latin games, and so on, as is duly set forth in an inscription to him at Tibur. But he was also an officeholder there. He had been made a priest of a local cult and a curator of the temple of Hercules Victor, both offices of a religious nature; he was patron of the municipium, an honorary post; and finally was for some reason a quinquennalis.<sup>51</sup> This last inscription is of fairly late date, and may for that reason have no real bearing upon the case. We must, however, consider it in order to explain away in some measure the anomaly of finding the same quinquennales in two or more different places, and as far as Roman senators are concerned it probably does so. Professor Dessau of Berlin called the author's attention to the fact that the Digest of Hermogenianus makes it clear that men who attained to senatorial rank in Rome were not bound to hold office in their own towns.<sup>52</sup> Yet there were men of that

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<sup>48</sup> C. I. L. x, 4619.

<sup>49</sup> C. I. L. x, 1572, 1573.

<sup>50</sup> C. I. L. xi, 416.

<sup>51</sup> C. I. L. xiv, 3609.

<sup>52</sup> Hermogenianus, *Corpus Iuris Civilis*, i (8th ed.), Dig. 50, 1, 23: *municeps esse desinit senatoriam adeptus dignitatem, quantum ad munera; quantum vero ad honorem, retinere creditur originem.*

rank who were quinquennales in two different places. In all this there is an element of uncertainty; and perhaps the incumbency of the same office in two different places might be explained by claiming that such a man was honorary quinquennalis in one place as a *municeps*, and in the other, as *incola* or possessor, held the office as a duty. Such a claim seems to me to lack solid foundation.

In addition to the examples given above, there are two groups of men who may or may not have been citizens of the places where they filled the office of quinquennalis. The one group is made up of soldiers and officers in the army, who became quinquennales in the given towns without having held any civil post there;<sup>53</sup> the other is composed of men who rose to that high rank without having attained to any other offices except those of a religious nature.<sup>54</sup> The men from these two groups least likely to be citizens would be the soldiers, but the ground is too uncertain to build upon. As before, it can only be said that the great majority of the quinquennales were unquestionably citizens of the towns in which they held office. On the other hand, there is just as good evidence that a small number of them were not citizens, hence it is possible to state that the proportion of quinquennales who were not citizens is large enough to justify a second claim of irregularity in connection with the choice of these officials. In discussing the number of the quinquennales, their eligibility to reelection, and the functions of their office, the general assumption was that the quinquennales were for most intents and purposes municipal censors. The reader may find himself, therefore, prepossessed with a fixed idea of the range of their duties. In truth there is very little which one might not safely have anticipated from even a superficial knowledge of the Roman censors, but this

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<sup>53</sup> The following citations refer to inscriptions of *cursus honorum*: C. I. L. ii, 4264; iii, 7504; v, 49, 4373, 7481; ix, 2564, 2599, 3307, 3671, 4753, 5363, 5365; xi, 4573.

<sup>54</sup> C. I. L. ii, 3426; iii, 1141, 1473, 1497, 1503, 1513, 3488, 7907; v, 2536; vi, 4496 (= 2289); viii, 4600, 16417; ix, 4206, 4207, 4399; x, 5835, 6236.



is in itself important and interesting. On the other hand, there are two or three cases exceptional enough in character to make it worth while to set down the facts about them somewhat more in detail, even quite apart from the manifest duty of making the inscriptional record of the quinquennales as complete as possible. Inscriptions give us the names and titles of two hundred and fifty-one duoviri quinquennales, eighty of whom (that is to say, forty pairs) are proved positively to be colleagues, and the names and titles of one hundred and thirty-two quattuorviri quinquennales, eight pairs of whom are seen to be colleagues. There are also twelve pairs of colleagues (five pairs of this number appearing in coin inscriptions) who have the simple designation quinquennales, and besides these, two pairs entitled praetores quinquennales. It is quite certain that whether these officials exercised their functions as duoviri quinquennales, as was true in the coloniae, or as quattuorviri quinquennales, as was true in the municipia, or under any other titular designation, they did so as a collegium of two men,<sup>55</sup> two exceptions to the contrary notwithstanding.<sup>56</sup>

During the Roman Republic it was uncommon for a man to hold the same office twice. To succeed oneself in the same position even after the lapse of some years was considered so dangerous a precedent that, as has been said above, a law was passed making it illegal for a man to hold the censorship twice. It might therefore be expected with reason that the quinquennales were limited to one term of office, but the last century of the Republic saw many precedents shattered. From the time when Tiberius Gracchus tried and failed, and his brother Caius tried and succeeded,

<sup>55</sup> C. I. L. iii, 1910, 2774, 7342, 7803; ix, 338, 422, 2660, 2667; x, 852, 904, 1233, 4585, 4586, 4587, 5405; xi, 4223, 4652, 4653, 5378, 6510; xiv, 2621, 2965, 2966; Eph. Ep. viii, 892.

<sup>56</sup> One inscription, C. I. L. x, 6015 (QVINQ. solus) shows a man serving alone. Cf. C. I. L. ii, 1964, 4: IIviri ambo alterve; ii, i, 24: IIvir solus creatus. Another, Wiener Studien 1902, pp. 286-291 (= L'Année Épig. 1903, nos. 372-375) mentions four quinquennales as a body serving as directors of games in the reign of Septimius Severus.

in gaining immediate reelection to the tribunate, from the seven consulships of Marius, the perpetual dictatorship of Sulla, and the prolonged proconsulships of Julius Caesar, until the emperors took the tribunician power every year and the consulship as often as they wished, the feeling of propriety in a reelection to the same office must have grown more and more common. Hence one ought not to be surprised to find quinquennales serving several terms. There seems indeed to have been no regulation as to the number of times a man could aspire to that office, for there are thirty-four inscriptions which show that the same man held it twice, thrice, or even four times.<sup>57</sup>

Information as to the functions of the office must be gathered from inscriptions. One from Istrus in lower Moesia gives to Caius Iulius Quadratus the title of *quinquennalis territorii Capidavensis*,<sup>58</sup> and thereby fixes a part of his duties. In Teate Marrucinorum, Lucius Septimius Calvus, who had been aedile and one of the city judges (*quattuorvir iure dicundo*), had been made praefect with quinquennialician power by the decree of the local senate (*praef. ex s. c. quinquennialicia potestate*), and must therefore have been delegated, probably not in a regular quinquennial year, to perform some work that was properly the duty of the censorial official.<sup>59</sup>

From Luca, in northern Etruria, comes an inscription which shows that quinquennales there exercised a function which we are accustomed to consider as a most important part of the duties of censors, namely, the approval of the expenditure of public funds (*pec(unia) publica ex testament(o opere) a quinquennialibus (probato)*).<sup>60</sup> It would

<sup>57</sup> C. I. L. iii, 1473, 1513, 7907, 6835 (= 296), 6836, 6837 (= 297), 6874; vi, 29699, 29704; viii, 980, 8210; ix, 652, 2568, 2648, 2855, 3096, 4200, 5357, 5533, 5831; x, 412, 1806, 5067, 5392, 5393; xi, 1525, 3013, 4087, 4209, 4572, 5004, 5175 b, 5220 a, b; xii, 4357; xiv, 171; Not. d. Sc., 1892, p. 351, 1902, p. 124; Cohen, Desc. d. Mon. Imp., i, p. 159, no. 743, i, p. 160, no. 748 (= Eckhel, D. N. V. ii, 163, 244).

<sup>58</sup> C. I. L. iii, 12491.

<sup>59</sup> Eph. Ep. viii, no. 120.

<sup>60</sup> C. I. L. xi, 1527.

also be fair to expect, according to the ancient theory that most officials ought rather to pay the state or city for political preferment in office than be paid for performance of public duties, that the quinquennales would be found not only approving municipal expenditure, but spending their own money in the erection of public buildings and in the construction of roads and bridges. There are forty-one inscriptions which have perpetuated the names of patriotic quinquennales, most of whom very generously at their own expense repaired or made roads or buildings of various kinds.<sup>61</sup> At Aesernia, for example, the two quattuorviri quinquennales, Marcus Rahius Quartus and Lucius Ofillius Rufus, paved a road at their own expense; Sextus Pedius Hirrutus built an amphitheatre at Interpromium; the Marci Lartieni Sabini, father and son, after having made many necessary repairs on an old aqueduct, were able during their term of office to bring water again into the city temple of Aequiculi; near Beneventum, Caius Aufidius and Caius Fufidius built a bridge; a bath was constructed at Aesernia by Quintus Fufius and Caius Antracius; and at a crossroads in the Ager Beneventanus, Marcus Nasellius Sabinus and his father, while they were quinquennales, built a porticus, furnished it with the necessary seats, tables, and so forth, and settled upon it a sum of money large enough to provide there an annual feast for the members (*pagani*) of their district.

The Roman censors, who were usually old and conservative men, were almost inevitably drawn into the supervision of the morals of the people. The very kind of power which they exercised tended to develop that particular function in

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<sup>61</sup> Walls: C. I. L. vi, 29704; xi, 6510. Roads: ix, 2667 (Rahius and Ofillius), 3688; x, 5074; xi, 3384, 5. Statues: viii, 7123, 14891; xi, 5264. Gate: v, 8288. Tablets: ix, 5439; xi, 5748. Theatres or amphitheatres: ix, 3044 (Pedius Hirrutus), 3173; x, 1443, 1444, 1445. Curiae: xi, 3583, 3584; xi, 5753. Aqueducts: ix, 4130 (Lartieni Sabini), 4209; x, 4654, 7954; xi, 6068. Bridge: ix, 2121 (Aufidius and Fufidius). Temples: iii, 10439; ix, 427; xiv, 2980; Jh. Oesterr. Arch. I. viii, 1905, 4. Baths: ix, 2660 (Fufius and Antracius); xi, 4094; Not. d. Sc., 1911, supp. p. 90. Various buildings: ix, 1618 (Nasellius Sabinus); x, 3678, 4587, 7845; xi, 712, 4819, 5378, 6225.

the censors, the only one, in fact, that survives in the modern use of the word. It might naturally be expected that this *regimen morum* would be mentioned somewhere as one of the functions exercised by the *quinquennales*, but one searches in vain for any definite allusion of this kind. In fact, Marquardt<sup>62</sup> denies that this particular function belonged to the office. One inscription, however, is particularly interesting for it seems to point to the exercise of that very supervision of customs and morals the existence of which the German authority denies. At Neapolis, Caius Octavius Verus, the praefect of a cohort of soldiers, a city flamen and an augur, held as his last and highest title that of *quinquennalis iuvenum*.<sup>63</sup> Despite, therefore, a few exceptional cases of minor importance (which, however, seemed to demand explanation), it must appear that the functions of the *quinquennales* were about what one would have expected from officials with censorial powers. Indeed, that very phrase is expressly used in eight inscriptions,<sup>64</sup> of which one may serve as an example. By decree of the senate of Vibo, Quintus Laronius and Lucius Libertius served there as judicial *quattuorviri quinquennales* with censorial power (*IIIIvir i. d. Q(VINQ) c. p. ex s. c.*).

A question which is variously answered in the inscriptions concerns the problem of eligibility to the office of *quinquennalis*. It has been shown above that certain of the Roman emperors, a few members of the imperial family, and two foreign kings who were in alliance with Rome were *quinquennales*, but all of these, as far as we know, delegated their power to appointees. There were Roman senators, imperial and provincial officers, soldiers who rose with no interven-

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<sup>62</sup> *Staatsverw.* i (2d ed.), p. 162.

<sup>63</sup> C. I. L. x, 1493. There is in C. I. L. viii, 883, a title of *Quinquennalicius gentis Severi*, of which I can offer no satisfactory explanation.

<sup>64</sup> C. I. L. ix, 44; x, 48, 49 (Laronius and Libertius), 53, 5844, 5850; xiv, 245, 375. C. I. L. xiv, 352, mentions two other *quinquennales* with censorial power, but they are officials of a collegium, and are therefore not cited.

ing steps from a military rank,<sup>65</sup> and priests who had previously held no other offices except those of a religious kind, —all these were quinquennales. On the other hand, nearly half of the men<sup>66</sup> known to have held this position had previously run the regular municipal round of offices, the *cursus honorum*, as properly constituted and accredited *duoviri* or *quattuorviri*. It would thus appear that the persons who were eligible to become, or, better perhaps, the men who did become quinquennales can be roughly divided into two groups. The first was one in which seemingly almost any person could qualify, and was composed of men who attained to that highest municipal rank in an irregular way; a second and equally important group was undoubtedly made up of citizens of the various municipalities who rose in the natural order of progress through the lower offices to the highest one in their competence.

Thus far the quinquennales have been considered from points of view where the comparison between these officials and the earlier Roman censors could be expected to throw light upon the history of the less well-known office. The administration of both offices at a like five-year interval was a governmental phenomenon so striking as to warrant us in believing that both offices arose under similar circumstances. The name for the interval between the periodic performance of the duties of both officials was the same, that is, *lustrum*. The very title *quinquennalis*, at first a natural adjectival explanation of old duties attached to a new office, was soon strong enough in many cases to draw away from its old associations and become a derivative, and it then assumed most of the rights and privileges of its prototype. Both the office of censor and of *quinquennalis* were important positions, and usually crowned the political careers of their incumbents. The functions of both offices have been compared and found to be practically alike.

Nevertheless, the hardest problem of all has yet to be

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<sup>65</sup> E. g.: C. I. L. iii, 8753; v, 4373; xi, 4573.

<sup>66</sup> To be exact, 383 out of a total of 937

solved. This is the question whether or not the quinquennales were elected or appointed to office. The censors were elected, although it must be borne in mind that for many years only men from the patrician class were eligible. If it might be assumed—and certainly what has been said above seems to warrant it—that the office of quinquennalis was filled by election because the office of censor, with which it has so much in common, was filled by election, the difficulties would disappear, but the warrant for that assumption is not quite sufficient. As already stated, a great many years intervened between the practical disappearance of the censor and the first appearance of the quinquennalis. In the event of the revival of an obsolete office, which of its original characteristics would most likely be accentuated? The very fact that it was a transference or a revival of an old office would seem to carry with it the survival of the basic functions of that office, and at the same time would suggest a reason for its rehabilitation. On this point the almost contemptuous silence of the Roman historians regarding all affairs not directly connected with Rome itself leaves the matter in the dark, and the investigator is compelled to use the evidence of inscriptions alone. Marquardt, who is the best authority on this subject, says that the quinquennales were elected by the city from its citizens.<sup>67</sup> Hirschfeld, in his comment in the *Corpus Inscriptionum Latinarum* upon an inscription to Caius Iunius Priscus, is not quite so sure, but states his belief that this particular man received the honor of quinquennalis either by the votes or at the request of the people.<sup>68</sup> The title of the office in question is *Ilv[ir i(ure) d(icundo) Qu]inq(uennalis) cand(idatus) Arelat(ensium)*. One is forced to suspect that in their great handbook on Roman constitutional antiquities Marquardt and Mommsen have based their statement too much upon the *fasti*, especially those of Canusium. This calendar, to which

<sup>67</sup> Marquardt, *Staatsverw.*, i (2d ed.), p. 163: "Sie [die Quinquennalen] werden von der Stadt aus der Buergerschaft gewaehlt."

<sup>68</sup> On C. I. L. xii, 697: "qui suffragiis sive ex postulatione populi honorem consecutus est."

many references are made in connection with this matter of the election of quinquennales, is properly dated as of the year 223 A. D., but in its date it carries its own condemnation, for it is much too late to show anything about the way in which the office began. It should, therefore, be used with particular care.

On the other hand, the fasti of Venusia, a town in Apulia in south central Italy, deserve much more attention than they have received.<sup>69</sup> In the first place, they belong to the period 35 to 28 B. C., that is to say, not more than ten or fifteen years later than the earliest date that can be assigned with certainty to the inscription mentioning the first quinquennalis. Moreover, these fasti give the names of nearly all the officials of Venusia for seven consecutive years. Perhaps the most important fact of all is that these fasti begin only eight years later than 43 B. C., which is the date of the change of Venusia from the status of a municipium to that of a colonia,—a momentous event to the inhabitants of a small city or town. It is probable that when the town became a colonia a number of citizens who had been soldiers in the Roman army were added; at all events, the list of the municipal officials includes some names which are not indigenous to that part of the country. The fasti show very clearly that a regular *cursus honorum* had not yet established itself in the colonia, because out of the forty-six men who appear therein as officials, only three were reelected to offices of higher rank, and even the steps as shown in these cases were not the same. Lucius Cornelius, who was a praefect in the year 722 A. U. C., seems likely to have been the duovir of the same name in the year 724; Lucius Scutarius, a quaestor in 722 A. U. C., seems to have arrived at the duovirate in the very next year, and Caius Geminius, who was aedile in the year 724, seems to have attained two years later to the dignity of duovir.

It is apart from the purpose of this paper to cite the names of the officials of Venusia, except so far as they show that

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<sup>69</sup> C. I. L. i (2d ed.), pp. 66-67 (= ix, 422).

there was evidently political strife between the old and the new citizens of the town. In the year 34 B. C. the duoviri were Quintus Larcus and Caius Rumeius, both probably from the older division of the town's inhabitants. In the next year Caius Aemilius and Quintus Pontienus, one an old settler, the other probably a newcomer, were the duoviri. In the year 32 B. C. there were praefects in office for part of the year, a fact which seems to show that there was some sort of trouble during the preceding year. The year 33 B. C. would have been the regular quinquennial period in the Roman municipalities if censors had been chosen at Rome. As a matter of fact they were not, hence it is to be expected that the regular officials, the duoviri, would be found at Venusia, and such is the case. Five years later, however, in the year 29 B. C., a census was begun in Rome, which was finished with the proper closing of the lustrum the next year by the consuls Augustus Caesar and Agrippa, who had been given censorial power. In the fasti of Venusia for the year 29 there appear officials known as quinquennales. It is therefore almost certain that these men, Lucius Oppius and Lucius Livius, were the first quinquennales ever acting in the colonia of Venusia. It is not hard to be convinced that men who bore the names of Oppius and Livius were not descendants of the old settlers of Apulia. The contrast becomes all the sharper when one compares their names with those of the aediles and quaestors who were in office the same year,—Narius, Mestrius, Plestinus, Fadius.

The political confusion in this new colonia is reflected very clearly in the calendar of officials, and perhaps one is not justified in drawing a conclusion from only one of several entries which seem to show irregular elections. Yet the evidence appears to indicate that the chief office in the municipality during the important quinquennial year was held by two men who had not held office in the city during the preceding six years, and also that their names show that they belonged to the new soldier citizens. They may have been elected in the regular way; it is impossible to say that



they were not, but the indications are very strong that the quinquennial year was presided over by officials who, if they were not appointed directly by the central authority at Rome, were at least submitted to the vote of the town by that authority. It is, however, impossible to do more than state the facts concerning the fasti of Venusia to show that there is reason to believe that the new colonia experienced political dissensions. From a tabulation of such an irregular cursus honorum it is possible to make certain assumptions as to the control which the central power exercised over a municipal government, but on the whole the fasti lead to the presumption that all city officers were elected.

In the fasti of Praeneste<sup>70</sup> there is proof of the appointment of officers who at least performed the duties of quinquennales. Germanicus and Drusus Caesar, also Nero and Drusus, the sons of Germanicus, were in some way and for some reason made quinquennales at Praeneste (the modern Palestrina). Probably they were elected by the citizens as an honor. It was certainly true at Praeneste, as in the greater part of the Roman world, that the necessity of guarding against an evasion of the old proportional military contingent had long since passed away, but for a number of reasons a correct census of citizens and property was desired. The important question at this point is whether the citizens of various towns elected to the office of quinquennalis members of the imperial family and other great men who were not of their own citizens for the purpose of doing them honor, or whether it was not a safe way to proceed in order to avoid the necessity of having quinquennales thrust upon them or suggested to them by the central authority. At all events, the four imperial Romans mentioned above, after having been made quinquennales at Praeneste, did not assume the duties of the office themselves, but appointed praefects to serve for them. All that can really be learned from the fasti of Praeneste is that the town had two different pairs of quinquennales who were not their own citizens

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<sup>70</sup> C. I. L. xiv, 2964, 2965, 2966.

and who delegated their duties to appointees. The amount of information thus gained from the fasti is not great, but the value of the fasti of Venusia and Praeneste, because they are earlier, is clearly greater than that of the fasti of Canusium.

There remains one more source of information upon which Mommsen lays stress in arguing that the office of *quinquennalis* was elective, namely, the wall inscriptions of Pompeii. Here again he seems to ascribe too much importance to rather slender evidence. It is quite true that appeals for votes for *quinquennales* were painted upon the walls in Pompeii, there being seventeen instances of such commendatory notices. All together four men are mentioned in these inscriptions, one man once and another three times, while Lucius Veranius Hypsaeus and Quintus Postumius Modestus divide the rest, one having six, the other seven notices.<sup>71</sup> These last two names, the former seeming to belong to a descendant of one of the old settlers, the latter to one of the new townsmen, probably show that a close election was expected and that the same rivalry still existed between the new and the old inhabitants that Cicero had noticed a century before.<sup>72</sup> It is possible that up to this time the office of *quinquennalis* had been filled at the dictation of the central authority, and that open and untrammelled candidacy for the office had just lately become practicable.

The chief difficulty is that the date of these inscriptions is after 50 A. D., in other words, nearly if not quite a hundred years later than the time at which one can say positively that *quinquennales* first began to appear as municipal officials, hence they cannot properly be used to prove that at Pompeii the office was elective from the beginning.

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<sup>71</sup> L. Veranius Hypsaeus 6 times: C. I. L. iv, 170, 187, 193, 200, 270, 394 (?); Q. Postumius Modestus 7 times: C. I. L. iv, 195, 279, 736, 756, 786, 1156. Only two other men appear, one 3 times: 214, 596, 824, the other once: 504 (this note is from my "A Study of the Topography and Municipal History of Praeneste" in Johns Hopkins University Studies in Historical and Political Science, ser. xxvi, nos. 9-10, p. 92, n. 159).

<sup>72</sup> Cic. pro Sulla 21.

It is now in order to consider whether any of the quinquennales owed their office to appointment and not to election. A number of such cases at once demand attention. Lucius Octavius Rufus of the town of Suasa in Umbria, who was a tribune in the fourth Scythian legion and was twice *praefectus fabrum*, was made an augur by decree of the municipal senate (*ex d. d. creatus*), and was then appointed *duovir quinquennalis* both by order of the Roman senate and by decree of the city *decuriones* (*duumvir QVINQ. ex s. c. et d. d.*).<sup>73</sup> At Dyrrachium in Illyricum, Lucius Titinius Sulpicianus, a tribune of the soldiers and a *pontifex*, served as *praefectus produovir* and *produovir quinquennalis*, and was later appointed *praefectus quinquennalis* for Titus Statilius Taurus, one of the consuls of the year 26 B. C.<sup>74</sup> In Libo, Quintus Laronius and Lucius Libertius, who have been named above in another connection, were by order of the senate made *quattuorviri quinquennales* with censorial power, which seems to imply something either apart from or in addition to a popular election.<sup>75</sup> A coin of Julius Caesar from the town of Parium in Mysia, which dates certainly before the year 44 B. C., informs us that Caius Arrius and Caius Iulius Tanc . . . were appointed *duoviri quinquennales* by decree of the municipal senate. As this is among the very earliest inscriptions we have which mention quinquennales, it is of great importance.<sup>76</sup>

There are also two coins of uncertain provenience dating from the time of the emperor Tiberius on which appear the names of three *duoviri quinquennales* who also obtained their office by a decree of the municipal senate.<sup>77</sup> Quintus Decius Saturninus, who held offices in many places, having been a *pontifex* at Rome, a military tribune in Asia, and a *quattuorviral* judge at Verona, to mention a few of them,

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<sup>73</sup> C. I. L. xi, 6167.

<sup>74</sup> C. I. L. iii, 605.

<sup>75</sup> C. I. L. x, 49.

<sup>76</sup> Cohen, *Desc. d. Mon. Imp.*, i, p. 20, no. 63 (Iulius Caesar).

<sup>77</sup> Cohen, *l. c.*, i, p. 211, no. 254 (Tiberius) : *ibid.*, i, p. 211, no. 253 (Tiberius), and i, p. 174, no. 28 (Livia).

held the office of *quinquennalis* four times at Aquinum, and three times out of the four by appointment.<sup>78</sup> Lucius Rufellius Severus, a soldier at Fanum Fortunae, owed one of his positions as *quinquennalis* to imperial appointment.<sup>79</sup> An inscription found at Luna a few years ago is of value in this same connection. Lucius Titinius Glaucus Lucretianus, when serving his *duovirate* for the fourth time, was in addition made *quinquennalis* by the favor or promotion of the emperor Claudius (*duovir IIII QVINQ. primus creatus beneficio divi Claudii*).<sup>80</sup> We also have the inscription of the man who seems to have been the first *quinquennalis* in the colonia of Sarmizegetusa in Dacia.<sup>81</sup> Quintus Ianuarius Rufus Tavius, a *flamen*, had the title *quinquennalis prim(us) pro imp(eratore)*. If we are right in thinking that Ianuarius was the first *quinquennalis* in this town, we have a rather important bit of evidence, for the office was clearly given to him as an appointment, quite apart from any question as to whether or not the emperor mentioned was elected in due form.

To sum up as to the method by which anyone became *quinquennalis*, there are on the one hand the several cases mentioned above<sup>82</sup> in which one of the Roman emperors or a member of the imperial family obtained the office, and, whether duly elected or not, appointed *praefects* to administer their duties for them.<sup>83</sup> There are also those *quinquennales*, among whom are eight Roman consuls or *proconsuls*, who held their office either by appointment or as an

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<sup>78</sup> C. I. L. x, 5392, 5393.

<sup>79</sup> C. I. L. xi, 6224.

<sup>80</sup> Wiener Studien 1903, p. 326 (*L'Année Épig.* 1904, no. 227).

<sup>81</sup> C. I. L. iii, 1503.

<sup>82</sup> See note 41.

<sup>83</sup> C. I. L. iii, 593, 605, 1497; ix, 3044 (*Praef. Germ. Caesaris QVINQVENNALICI (i)uris ex s. c.*), 4122; x, 5392, 5393, 5405, 6101; xi, 421, 1525, 5224, 6224; xiv, 2964, ii, 6, 8, 2965; *Bull. Arch. e Storia Dalmata*, 1902, pp. 6, 23 (*L'Année Épig.* 1902, nos. 60, 61); *Wiener Studien* 1903, p. 326 (*L'Année Épig.* 1904, no. 227).

honor, as their inscriptions clearly show.<sup>84</sup> It is more than probable that still another group of these officials should be considered appointees. Seventeen inscriptions give the names of as many quinquennales who held no other offices in the municipalities except such as were religious in their nature, and nearly every one of these men was flamen of some emperor. This, in connection with the fact that they were not in the regular line for political honors, seems to imply appointment rather than regular election.<sup>85</sup> The inscriptions of many other men prove that they did not advance gradually through the *cursus honorum* of the towns, but proceeded directly from the position of *praefectus fabrum* to the high office of *quinquennalis*.

On the other hand, there are some hundreds of these officials who passed in all regularity through the lower offices of *quaestor* and *aedile*, and who then, when they happened in the right years to be elected *duoviri* or *quattuorviri*, exercised in addition the functions of *quinquennalis*. As to the regularity of the election of such men there can be no question in the face of a number of inscriptions which state in so many words that a man was nominated or elected *quinquennalis* for the ensuing year by unanimous vote, or that another had obtained the position after having in proper order filled all the other municipal offices.<sup>86</sup> At the same time, it must be carefully borne in mind that in general it is in the earlier inscriptions that the irregularities of attainment to the office are seen, and that the later the inscriptions appear the more regular do they become.

It would seem, therefore, that the evidence from inscrip-

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<sup>84</sup> C. I. L. iii, 1503, 4108; ix, 1123, 2334, 4119, 5533; x, 5852, 5853; xi, 3364, 6167; xiv, 3599, 3609, 4237; Eph. Ep. viii, no. 120. Probably also C. I. L. viii, 2362.

<sup>85</sup> See note 54.

<sup>86</sup> C. I. L. x, 5670: *Quod . . . de IIviro Quinquenn. in prox. annum fieri placere M. Vibium Auctorem multa de r. p. merentem . . . honoret omnium suffragentibus*. See also C. I. L. viii, 8210, 9643, 11827 (= 630); x, 3678 (*omnib(us) munerib(us) functus*); Apul., Met. x, 18.

tional sources shows a sufficient diversity to make pertinent at least three questions. First: Were the quinquennales from the origin of that municipal office appointed to their places? Second: Were they nominated by the central authority in Rome to the citizens of any given town, and then duly elected there in the customary way? Third: Were they from the beginning elected in due form by the citizens of the municipalities, thus owing their competence to no suggestion or coercion from outside? It is certain that there were quinquennales who were duly elected, usually after having held the proper lower offices of their cities, in many cases perhaps without having done so. This fact is attested by the larger number of the inscriptions dealing with the office. Unfortunately, none of these sources date sufficiently near the beginning of the municipal life of the *colonia* or *municipium* to make positive or definite the proof which their number might seem to warrant. At the same time, the fairly numerous *praefecti quinquennales* and other *praefects* who exercised the office of *quinquennalis*, but who were Roman military or administrative officers in the towns only for a short time and were usually not citizens there at all, must continue to hold an important place in any estimate of the system. The localities to which *praefects* were sent were under complete imperial control.

An important consideration is that very few of the pertinent inscriptions can be dated before the year commonly agreed upon as the beginning of the Roman empire; that several of these earlier inscriptions prove that the quinquennales were appointed, not elected; and that in general nearly all of them show irregularities which are hard to explain. In imperial times, in which fall the dates of the great majority of the inscriptions concerning the quinquennales, these officers were nominated to the various municipalities, and had to be accepted by the voters. This is explicitly stated in the law of the emperor Vespasian known as the *lex de imperio*.<sup>87</sup> Mommsen's statement that up to the time of

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<sup>87</sup> *Lex de imperio*, C. I. L. vi, 930, sect iv; Bruns, *Fontes* (7th ed.), p. 128; Brassloff, *Wiener Studien* 25, 1903, pp. 327-8, gives

the emperor Nero every office except that of consul was included in the imperial right of *commendatio* seems to refute his own words about the wall inscriptions of Pompeii.<sup>88</sup> Certainly it helps to strengthen the suggestion offered above that even if those inscriptions proved the fact of election, Rome at this time felt no fear in throwing open to the general electorate an office which she had in earlier and more unsettled times kept in her own control. The right just mentioned of *commendatio* or *suffragatio* was given in the year 27 B. C. as a permanent prerogative to Augustus Caesar. Whether there was legal authority for such a method of control of offices in late republican times is not certain; but the fact that the emperor Augustus used this method seems a very good reason for believing that it was not new, and that such nominations for certain kinds of important offices had been made before his time by the central authority at Rome. One of the characteristic traits of Augustus, according to the writers who have made him their study, was that he absorbed prerogatives and created few precedents.

A sufficient number of cases has been cited to make it certain that the *quinquennales* were not always elected by popular vote, that there were many irregularities in the earlier inscriptions, that the emperors could and did do with the office of *quinquennalis* about as they pleased, and that only in very late times did the office appear in all due form as the summit of the career of a municipal office-holder. By that time those functions of the office which earlier had been important to the central authority were no longer necessary to the life of the commonwealth. When this point was

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proof of imperial recommendation for choice of officials since Augustus (C. I. L. ix, 3158: iv, 670). See also full discussion by Hellem, Chicago dissertation, *Lex de imperio Vespasiani* (1902). Note too the ease with which changes in municipal office were made: C. I. L. ii, 4277 (Tarraco): C. Valerius Avitus, *Ilvir translatus ab divo Pio ex munic. August. in col. Tarrac.* See also for material on "candidati Caesaris," Stobbe, *Phil.* xxvii, 88-112: xxviii, 648-700.

<sup>88</sup> Mommsen, *Staatsrecht*, ii (3d ed.), p. 923 ff.

reached the office fell into disuse, and the title was taken up by guilds of freedmen and artisans of the lower classes. By them it was used for their presiding officer, probably with no idea of its former meaning.

One further suggestion may perhaps be allowed. For reasons both military and financial the one office over which the central government had to retain control was that of the census-taker.<sup>89</sup> It is safe to believe that the opportunist policy of the Romans, which respected local prejudices as far as possible, will account for the fact that administration was not everywhere uniform in the Roman domains. Sulla reformed the constitution so that the Roman *cursus honorum* no longer included the censorship;<sup>90</sup> and although this was done for the purpose of throwing the control of affairs back in the hands of the senate, it was in reality a return to that earlier unification of powers which was again so soon to result in a comprehensive bureaucracy. After a century of civil strife, the one-man power began to recognize its responsibilities to the provinces and to the thousands of small towns, and a new impetus was given to municipal politics. There appeared at the top of the *cursus honorum* a new office to which was attached a title that very happily suggested its censorial function without mentioning it. This was the *quinquennalis*.

In conclusion, many inscriptions of *quinquennales*, both early and late, show that this high municipal office was gained by appointment. The fact that the emperor or princeps Augustus was granted that prerogative seems practically to warrant a belief in a previous right of appointment to certain offices necessary to government which was exercised by officials of the time of the Republic. This Augustan right,

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<sup>89</sup> In 88 B. C. there were 80,000 Romans resident in Asia alone, Val. Max. ix, 2, 3, Ext. See Clinton, *Fasti Hellenici*, *Lustra Romana*, pp. 448-471.

<sup>90</sup> Mommsen, *Staatsrecht*, ii (3d ed.), i, p. 336; Cic. ad Verr. i, 50, 130; C. I. L. i, p. 102: *censoria negotia constitutione Sullana consulibus praetoribusve mandata*; Heitland, *The Roman Republic*, ii, 447, 514-516.



confirmed in the clause of Vespasian's *lex de imperio* mentioned above which grants the power of nomination to the emperors, seems to be rather a proof of extended privileges, an enlargement of a survival from republican times, than an entire subversion of precedent. Furthermore, not a single *quinquennalis* who is mentioned in any of the *fasti* appears in them in any other official capacity. The fact also that many of these officials had gained that high municipal honor in more than one place, and that scores of them held that particular office and no other, makes it appear that in many cases no municipal eligibility qualifications could have existed at all, especially since only in the later inscriptions does a regular round of offices appear. Again, when the designation *quinquennalis* is seen to have been given to the highest officer in the *Augustales*, we seem to have another reason for saying that if a title had been considered wholly elective, it would hardly have been so used. Finally, the adoption of the term *quinquennalis* by the *corpora* and *collegia* of Rome and Ostia seems again to show that it was felt to be proper and right to take a municipal official title which, although no longer much used, did not owe its origin to the municipalities but to Rome. These considerations make it evident that the duties of the *quinquennales* were in general the same as those of the *censors*, revised to suit the requirements of the municipalities, and that the title was not officially adopted, but was more or less accidentally applied to the office because it was so obviously suited to the case. It is also clear that at the beginning the office of *quinquennalis* was filled by appointment of the central authority,<sup>91</sup> that later the candidates were elected at the suggestion of the same central power, and that finally they were regularly elected in an untrammelled municipal *cursus honorum*.

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<sup>91</sup> Mommsen, in commenting upon the *Lex col. Genetivae*, 139 (*Juristische Schriften*, i, p. 229) says: *Magistratus, qui primi essent post coloniam deductam, non colonorum suffragiis creatos esse, sed a conditore factos consentaneum est intellegiturque fortasse id ipsum, quamquam tum scribendum est iussu.*

## STATISTICS AND CAPITULATION

### ABBREVIATIONS OF THE WORD QUINQUENNALIS

A tabulation of all the occurrences of the word quinquennalis or its abbreviations in inscriptions or on coins gives the following results: QUINQ. 406 times, QQ. 333 times, QUINQUENNALIS 71 times, Q. 20 times, QUINQUENN. 16 times, QUINQUENNALICIUS 15 times, QUIN. 17 times, QUINQUENNAL, 13 times, QUINQUEN. 10 times, QVI. 7 times, *δωάνηρ πενταετηρικός* 3 times, QQQ. once,<sup>92</sup> QV. once, uncertain fragments, 52 times.

In the inscriptions from Rome, almost all of quinquennales of collegia, QQ. is the favorite abbreviation, being found 123 times, QUINQ. 49 times, QUINQUENNALIS 17 times, QUINQUENN. 7 times, QUINQUENNAL 4 times, QUINQUENNALICIUS 2 times, QUIN. 1 time; in Ostia QQ. appears 76 times, QUINQ. 9 times, scattering 8 times; also in Ostia the Seviri are found 23 times as Sevir Aug. idem QQ., sevir idem Quinq. 3 times, sevir et QUINQUENNALIS 2 times, scattering 6 times; in Pompeii QUINQ. is practically the only form found, occurring 41 times, QUINQU(?) once.

### MENTION OF QUINQUENNALES ON COINS

The names of 72 quinquennales appear on 47 different issues of imperial coins. Forty-eight of these officials are termed Ilviri Quinquennales, but of these the colleagues of ten are not named. The provenience of the quinquennales in coins is as follows: Carthago Nova 28, Corinth 14, Ilici 6, Valentia 6, Parium 4, Buthrotum 4, Celsa 2, Pella 1, Paestum 1, uncertain 6.

### CAPITULATION

There are in all 937 recorded quinquennales; the word quinquennalis, or its abbreviation, appears 967 times in mentioning these officials; 251 men are Ilviri Quinquennales, 80

<sup>92</sup> In an inscription of 251 A. D.: per patronis et QQQ., Bull. Com. 30, 1902, p. 329. Rome.

of these appearing as colleagues; 132 men are IIIIviri Quinquennales, 16 of these being colleagues; 93 men are quinquennales with no further titular designation; 72 men are designated quinquennales on coins; 28 different collegia and 15 different corpora (including the Augustales) give all told 271 non-political quinquennales.

PROVENIENCE OF THE QUINQUENNALES

Inscriptions not yet in the C. I. L., and those on coins, are classified according to the C. I. L.

C.I.L.	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV
Quinquennales (political)	I	20	99	13	38	—	—	64	132	115	106	2	3	44
Quinquennales of collegia and corpora (non-political)	Religious	115					3		2	9	1		76	
		Civil	6							1		3		
			Augustales	1.					3	2		1	2	47
Total	I	20		99	13	39	124	—	64	137	118	118	2	4

The Quinquennales of collegia and corpora as given in the table above are found as follows:—

CIVIL

- 114 in C. I. L.
- 3 “ “

2 “ “

9 “ “

1 “ “

76 “ “
- VI: Rome.

IX: Aesernia 2, Alba Fucens 1.

X: Puteoli 1, Velitrae 1.

XI: Pisaurum 1, Volsinii 1, Sentinum 3, Spole-tium 4.

XIII: Lugdunum 1.

XIV: Ostia 74, Praeneste 1, Tusculum 1.

RELIGIOUS

- 6 “ “

1 “ “

3 “ “
- VI: Rome.

XI: Sentinum.

XIV: Lavinium 1, Lanuvium 1, Aricia 1 (Not d. Sc., 1911, p. 266).

AUGUSTALES

Practically all in C. I. L. XIV from Ostia.

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